

**Before the
Federal Communications Commission
Washington, DC 20554**

BELLSOUTH
TELECOMMUNICATIONS, LLC
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-276
Bureau ID No. EB-20-MD-003

REDACTED

INITIAL SUPPLEMENTAL BRIEF

**BELLSOUTH TELECOMMUNICATIONS,
LLC d/b/a AT&T FLORIDA**

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Date: April 8, 2021

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I. INTRODUCTION AND SUMMARY

The pleadings and record confirm that the just and reasonable rate for AT&T's use of Duke Florida's poles is the new telecom rate that is guaranteed AT&T's cable and CLEC competitors. That properly calculated new telecom rate, which is about \$5 per pole, fully compensates Duke Florida for all "costs caused by third-party attachments," including AT&T's.¹ There is no valid reason to charge AT&T more.

The terms and conditions of the parties' joint use agreement ("JUA") do not warrant a higher rate because they do not provide AT&T *net* benefits "that materially advantage [AT&T] over other telecommunications carriers or cable television systems providing telecommunications services on the same poles."² As compared to the contractual, statutory, and regulatory rights enjoyed by AT&T's competitors, the JUA disadvantages AT&T—providing AT&T limited access to fewer poles, denying AT&T the make-ready deadlines and remedies that expedite deployment for AT&T's competitors, and forcing AT&T to shoulder far higher rental and non-rental costs. The just and reasonable rate for AT&T is the new telecom rate.

And even if a higher rate were lawful, it could not exceed the old telecom rate, which, by definition, is about 1.5 times the new telecom rate, or about \$7.50 per pole. Duke Florida's effort to charge AT&T far higher rates—specifically, new telecom rates as high as [REDACTED] per pole and old telecom rates up to [REDACTED] per pole³—violates Commission rules and regulations and rests on unexplained, inaccurate, and unrepresentative data that Duke Florida does *not* use to calculate

¹ See *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5321, 5324 (¶ 183 n.569, ¶ 191) (2011) ("Pole Attachment Order") (quoting National Broadband Plan at 110).

² 47 C.F.R. § 1.1413(b).

³ Answer ¶¶ 12, 22.

rates for AT&T's competitors. The correct result in this case, therefore, is the approximately \$5 per pole new telecom rate. It is the only rate that will create rate parity and eliminate the artificially high rates the Commission rejected a decade ago because they discourage investment, impede competition, and undermine the Commission's broadband and deployment goals.⁴

II. ARGUMENT

A. The Terms and Conditions of the JUA Competitively *Disadvantage* AT&T.

AT&T is entitled to the new telecom rate for its use of Duke Florida's poles because Duke Florida does not provide AT&T "net benefits" under the newly-renewed JUA as compared to the terms and conditions that apply to "other telecommunications carriers [and] cable television systems providing telecommunications services on the same poles."⁵ Instead, the JUA competitively *disadvantages* AT&T in at least seven ways.

1. *Less Advantageous Contractual Access to Duke's Poles.* AT&T's limited contractual access to Duke Florida's poles sets AT&T "at a material disadvantage compared to CLECs and CATVs,"⁶ which enjoy broader and permanently guaranteed statutory access to Duke Florida's poles.⁷ As an ILEC, AT&T has "no statutory right of nondiscriminatory access

⁴ See, e.g., *Pole Attachment Order*, 26 FCC Rcd at 5241 (¶ 1) ("The Order is designed to promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."); see also *In the Matter of Accelerating Wireline Broadband Deployment, Third Report and Order and Declaratory Ruling*, 33 FCC Rcd 7705, 7769 (¶ 126) (2018) ("Third Report and Order") ("[W]e agree ... that greater rate parity between incumbent LECs and their telecommunications competitors 'can energize and further accelerate broadband deployment.'").

⁵ 47 C.F.R. § 1.1413(b); *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123). Under the Commission's orders and regulations, all pole attachment terms and conditions applicable to CLECs and cable providers—whether provided by statute, regulation, or contract—are relevant. See 47 C.F.R. § 1.1413(b); *Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶¶ 217-218).

⁶ Answer Ex. E at DEF000208 (Metcalfe Aff. ¶ 9).

⁷ 47 U.S.C. § 224(f); see also Compl. Ex. C at ATT00043 (Peters Aff. ¶ 24); Reply Ex. C at ATT00282-283 (Peters Reply Aff. ¶ 15); Reply Ex. E at ATT00329 (Dippon Reply Aff. ¶ 42).

to poles,” so its pole access is purely a matter of contract under the JUA.⁸ That JUA allows Duke Florida to deny AT&T access to *any* pole it deems unsuitable for joint use⁹ and to terminate—at any time and for any reason—AT&T’s ability to deploy facilities on future Duke Florida pole lines.¹⁰ If Duke Florida terminates AT&T’s access to future pole lines, AT&T would need to identify, obtain approval for, and fund alternate infrastructure for its facilities without the rights and protections of the federal pole attachment scheme, which would significantly complicate and increase AT&T’s deployment costs.¹¹ This gives Duke Florida extraordinary bargaining leverage over AT&T.¹²

In contrast, CLECs and cable companies enjoy a permanent statutory right to access Duke Florida’s poles, a right that is unavailable to AT&T.¹³ And, even in those few cases where Duke Florida can lawfully deny access due to insufficient pole capacity,¹⁴ Duke Florida’s license

⁸ *Pole Attachment Order*, 26 FCC Rcd at 5329-30 (¶ 207).

⁹ Compl. Ex. 1 at ATT00092 (JUA § 2.2); *see also id.* at ATT00092 (JUA § 3.1).

¹⁰ *Id.* at ATT00102-103 (JUA § 16.1).

¹¹ See, e.g., Compl. Ex. C at ATT00043 (Peters Aff. ¶ 24); Reply Ex. C at ATT00281-283 (Peters Reply Aff. ¶¶ 13-15); Reply Ex. E at ATT00329-330; ATT00346 (Dippon Reply Aff. ¶¶ 42, 73).

¹² See, e.g., *Verizon Md. LLC v. Potomac Edison Co.*, 35 FCC Rcd 13607, 13617-18 (¶ 26) (2020) (“*Potomac Edison OrderBellSouth Telecommc’ns, LLC v. Fla. Power & Light Co.*, 35 FCC Rcd 5321, 5326-27 (¶¶ 11-12) (EB 2020) (“*FPL 2020 Ordersee also* Compl. Ex. D at ATT00058 (Dippon Aff. ¶ 23); Reply Ex. E at ATT00346 (Dippon Reply Aff. ¶ 73).

¹³ See 47 U.S.C. § 224(f); *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16059-60 (¶ 1123) (1996) (“*Local Competition Order*

¹⁴ 47 U.S.C. § 224(f); *Pole Attachment Order*, 26 FCC Rcd at 5341 (¶ 232) (narrowly construing when utilities may deny access for lack of capacity); Initial Comments of Duke Energy Corp., et al. at 16-17, *In the Matter of Accelerating Wireline Broadband Deployment by Removing*

agreements require it to [REDACTED]

[REDACTED]¹⁵ AT&T's far more limited contractual access to Duke Florida's poles sets it at a competitive disadvantage.

2. ***Pole Ownership and Maintenance Obligations.*** AT&T bears the "burdens ... of pole ownership" under the JUA whereas its competitors "do not own poles" under Duke Florida's license agreements.¹⁶ Absent a permanent statutory right to attach, AT&T relies on the JUA to access Duke Florida's poles, but that JUA extracts a significant cost. AT&T must own and "at its own expense, maintain its joint poles" and "replace ... such of said poles as become defective" or are damaged during emergencies.¹⁷ In contrast, AT&T's competitors' statutory right to attach to Duke Florida's poles and resulting license agreements protect them from these costs, requiring Duke Florida to own and maintain the shared poles at its cost.¹⁸ This distinction is not trivial. AT&T has more than \$234 million invested in poles in Florida, expended tens of millions of dollars in each year covered by this dispute to own and maintain those poles, *and still*

Barriers to Infrastructure Investment, Docket 17-84 (Sept. 2, 2020) ("Duke Initial Comments") (just 0.024% of electric utility poles required replacement in 2019 due to lack of capacity).

¹⁵ CATV-1 § 3.3 at DEF000013; *see also* Ex. 2, Line 1 (Additional license agreement cites).

¹⁶ Answer Ex. A at DEF000130 (Freeburn Decl. ¶ 9); Reply Comments of Progress Energy Florida n/k/a Duke Energy Florida, et al. at 28-29, *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245 (Oct. 4, 2010); *see also* Compl. Ex. C at ATT00040-41 (Peters Aff. ¶¶ 18-19); Compl. Ex. D at ATT00067-68 (Dippon Aff. ¶ 41); Reply Ex. C at ATT00293 (Peters Reply Aff. ¶ 35); Reply Ex. D at ATT00299 (Davis Reply Aff. ¶ 6).

¹⁷ Compl. Ex. 1 at ATT00096, ATT00097 (JUA §§ 4.7, 8.1).

¹⁸ See, e.g., Ex Parte Letter at 2, WC Docket No. 17-84 (Jan. 29, 2021) ("Duke [and other electric utilities] made clear that, where they have determined that a pole needs replacement due to deterioration, they pay to replace the pole."); *see also* CLEC-2 § 26 at DEF000323 [REDACTED]; [REDACTED]; CLEC-3 § 2.3 at DEF000408 [REDACTED]; Ex. 2, Line 2 (Additional license agreement cites).

paid Duke Florida the exorbitant rate of over [REDACTED] per pole to attach to Duke Florida's poles¹⁹— while AT&T's competitors incurred zero pole ownership and related maintenance costs and paid an approximate \$5 new telecom rate to attach to Duke Florida's poles.²⁰ This disparity puts AT&T at a competitive disadvantage compared to CLECs and cable companies.

3. Lack of Expedited Make-Ready and Self-Help Remedies. AT&T is competitively disadvantaged by the JUA's lack of language providing for timely make-ready when other attachers must modify (*e.g.*, move or transfer) their facilities before AT&T can attach its facilities to Duke Florida's poles.²¹ In fact, the JUA provides no deadlines, much less accelerated deadlines, for make-ready. As a result, AT&T is uniquely subject to “excessive delays,” with “limited remedies” if Duke Florida or AT&T’s competitors do not promptly complete their work.²² In contrast, AT&T’s competitors are statutorily guaranteed *timely* access

¹⁹ See Compl. Ex. A at ATT00018 (Rhinehart Aff., Ex. R-3); Compl. Ex. B at ATT00025-26 (Miller Aff. ¶ 8); Compl. Ex. 3 at ATT00155-159 (Invoices).

²⁰ Answer ¶ 12; Duke Florida's Supp. Response to Interrog. No. 3, Ex. 1 at DEF000343; *see also Local Competition Order*, 11 FCC Rcd at 16073 (¶ 1156) (“[W]here access is mandated, the utility must charge all parties an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use”). AT&T’s competitors paid even less to attach to AT&T’s poles. See Compl. Ex. A at ATT00003 (Rhinehart Aff. ¶ 2 n.1) (stating that AT&T charged new telecom and cable rates in Florida that ranged from [REDACTED] per pole during the 2015 through 2019 rental years, assuming 1 foot of space occupied).

²¹ See Compl. Ex. 1 at ATT00092 (JUA § 3.1) (stating that AT&T can attach its facilities “*after* [Duke Florida] completes any transferring or rearranging which may then be required”) (emphasis added); *see also id.* at ATT00101-102 (JUA § 14.2) (stating that third-party attachments on Duke Florida’s poles are “treated as attachments belonging to [Duke Florida]”); *see also* Compl. Ex. C at ATT00040 (Peters Aff. ¶ 17) (“AT&T generally needs to wait for all existing attachers to sequentially visit the pole and move or relocate their attachments before AT&T can begin the work it requires to attach.”); Reply Ex. C at ATT00290-291 (Peters Reply Aff. ¶ 31) (AT&T “typically is the last party able to transfer its facilities to [a] replacement pole because it has to wait for the other attachers to complete their transfers first”).

²² *Pole Attachment Order*, 26 FCC Rcd at 5250-51 (¶ 21) (“Evidence in the record reflects that, in the absence of a timeline, pole attachments may be subject to excessive delays.... Beyond generalized problems caused by utility lack of timeliness ..., the record shows pervasive and widespread problems of delays in survey work, delays in make-ready performance, delays

to Duke Florida’s poles,²³ and are protected by the Commission’s one-touch make-ready option, make-ready deadlines, and self-help remedies designed to speed their deployment and reduce their costs.²⁴

4. ***Costlier Location on the Pole.*** The JUA’s allocation of space to AT&T at the bottom of the communications space²⁵ is a competitive disadvantage due to undisputed “costs and risks attendant to the lowest position” on Duke Florida’s poles.²⁶ As the typical lowest attacher, AT&T is most likely to receive a request to temporarily raise its facilities to accommodate an oversized vehicle or a load that exceeds standard vertical clearance; as usually the last to transfer its facilities to a replacement pole, AT&T often must make multiple trips to a pole when other attachers located higher on the pole did not transfer their facilities as scheduled;

caused by a lack of coordination of existing attachers, and other issues.”); *id.* at 5242 (¶ 3) (“The absence of fixed timelines and the potential for delay creates uncertainty that deters investment. [And], if a pole owner does not comply with applicable requirements, the party requesting access may have limited remedies”); *see also* Compl. Ex. C at ATT00040 (Peters Aff. ¶ 17); Reply Ex. C at ATT00290-291 (Peters Reply Aff. ¶ 31).

²³ See *In the Matter of Implementation of Section 224 of the Act A Nat’l Broadband Plan for Our Future*, 25 FCC Rcd 11864, 11883 (¶ 17) (2010).

²⁴ 47 C.F.R. § 1.1411; *see also* Third Report and Order, 33 FCC Rcd at 7714 (¶ 16) (“With OTMR ..., new attachers will save considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments.”); *FPL 2020 Order*, 35 FCC Rcd at 5329 (¶ 14 n.56) (explaining that the Commission’s one-touch make-ready regulations were adopted “so that attachment is faster and cheaper”). The Commission’s make-ready regulations do not protect AT&T because they define “new attacher” to mean “a cable television system or telecommunications carrier” and exclude ILECs from the definition of “telecommunications carrier.” 47 C.F.R. §§ 1.1402(h), 1.1411(a)(2); *see also* Compl. Ex. C at ATT00040 (Peters Aff. ¶ 17).

²⁵ Compl. Ex. 1 at ATT00090 (JUA § 1.1.6(B)).

²⁶ Answer ¶ 19; *see also* Compl. Ex. C at ATT00041-43 (Peters Aff. ¶¶ 20-23); Compl. Ex. D at ATT00071 (Dippon Aff. ¶ 46); Compl. Ex. 17 at ATT00206-209 (Damage Reports); Reply Ex. C at ATT00290-291 (Peters Reply Aff. ¶¶ 30-31).

and AT&T incurs higher repair costs.²⁷ When a pole leans (e.g., from weather damage, normal wear and tear, or improperly engineered or constructed competitor facilities), the lowest facilities on the pole (typically, those of AT&T) can become low-hanging without notice and vulnerable to being struck by large vehicles.²⁸ In addition, the lowest facilities are more vulnerable to damage by workers ascending a pole to work on higher-placed facilities.²⁹ While AT&T does not maintain separate records of damage attributable to its location on a pole and often repairs such damage without reporting it, its records nonetheless reflect those added costs.³⁰

AT&T’s position as lowest on the pole resulted from history rather than choice.³¹ Standard construction practices in the early days of joint use placed AT&T’s facilities at the bottom of the communications space because AT&T was the only consistent communications attacher on utility poles at that time.³² That location now continues—despite AT&T’s efforts to change it³³—because consistency in placement of facilities allows all companies to quickly

²⁷ Compl. Ex. C at ATT00040-43 (Peters Aff. ¶¶ 17, 20-23); Compl. Ex. D at ATT00070-71 (Dippon Aff. ¶ 46); Compl. Ex. 17 at ATT00206-209 (Damage Reports); Reply Ex. C at ATT00290-291 (Peters Reply Aff. ¶¶ 30-31).

²⁸ Compl. Ex. C at ATT00042-43 (Peters Aff. ¶¶ 22-23); Compl. Ex. D at ATT00071 (Dippon Aff. ¶ 46); Compl. Ex. 17 at ATT00206-209 (Damage Reports).

²⁹ Compl. Ex. C at ATT00042 (Peters Aff. ¶ 22); Compl. Ex. D at ATT00071 (Dippon Aff. ¶ 46); Compl. Ex. 17 at ATT00206-209 (Damage Reports).

³⁰ Compl. Ex. C at ATT00042-43 (Peters Aff. ¶ 23); Compl. Ex. 17 at ATT00206-209 (Damage Reports).

³¹ Compl. Ex. C at ATT00041-42 (Peters Aff. ¶ 21); Compl. Ex. D at ATT00071 (Dippon Aff. ¶ 46); *see also* Letter Order at 4, *Verizon Md. v. Potomac Edison*, Proceeding No. 19-355 (May 22, 2020) (holding that competitive benefits must “derive from the terms and conditions of the joint use agreement rather than Verizon’s historical status as an incumbent LEC.”).

³² Compl. Ex. C at ATT00041-42 (Peters Aff. ¶ 21); Compl. Ex. D at ATT00071 (Dippon Aff. ¶ 46).

³³ See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, 35 FCC Rcd 7936, 4840 (¶ 9 n.28) (2020)

identify the ownership of facilities on a pole and avoid the physical damage that would result if facilities crisscrossed mid-span.³⁴ And so, while other communications companies are increasingly placing facilities below AT&T's with AT&T's encouragement,³⁵ the competitive disadvantage associated with the typical location of AT&T's facilities continues to increase AT&T's costs relative to its competitors.

5. ***Unlawful Allocation of Unused Space.*** The JUA allocates excess space to AT&T that AT&T does not need, want or use,³⁶ while Duke Florida's license agreements provide AT&T's competitors as much space as they require at rates based on the space they actually occupy.³⁷ This competitive disadvantage has had costly ramifications for AT&T. For

(“*Declaratory Ruling*”); *see also* Compl. Ex. C at ATT00041 (Peters Aff. ¶ 20); Reply Ex. C at ATT00290 (Peters Reply Aff. ¶ 30); Reply Ex. E at ATT00322 (Dippon Reply Aff. ¶ 25).

³⁴ Compl. Ex. C at ATT00041-42 (Peters Aff. ¶ 21); Compl. Ex. D at ATT00071 (Dippon Aff. ¶ 46).

³⁵ *See Declaratory Ruling*, 35 FCC Rcd at 4840 (¶ 9 n.28); *see also* Compl. Ex. C at ATT00041 (Peters Aff. ¶ 20); Answer Ex. C at DEF000166 (Burlison Decl. ¶ 17); Reply Ex. C at ATT00290 (Peters Reply Aff. ¶ 30); Reply Ex. D at ATT00306-307 (Davis Reply Aff., Ex. D-1).

³⁶ Compl. Ex. 1 at ATT00090 (JUA § 1.1.6(B)). AT&T does not need, want, or use the 3 feet of space allocated by the JUA for existing facilities, future facilities, or any other purpose, and it cannot sublet the space under the terms of the JUA. *See id.* (designating “standard space” for use by a “party” to the JUA); *see also* Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 25); Compl. Ex. D at ATT00070-71 (Dippon Aff. ¶ 46); Reply Ex. C at ATT00283-290 (Peters Reply Aff. ¶¶ 16-29); Reply Ex. D at ATT00301-303, ATT00306-308 (Davis Reply Aff. ¶ 10, 13 & Ex. D-1); Reply Ex. E at ATT00321-325 (Dippon Reply Aff. ¶¶ 23-32).

³⁷ *See, e.g.*, CATV-1 § 2.1 at DEF000011 [REDACTED]

[REDACTED]; *see also* Ex. 2, Line 5 (Additional license agreement cites); 47 C.F.R. § 1.1406(d)(2) (calculating new telecom rates based on “Space Occupied”); *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) (“[U]nder the Commission’s rate formula, ‘space occupied’ means space that is ‘actually occupied’”); *In Re Amend. of Commission’s Rules & Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 12143 (¶ 77) (2001) (“*Consolidated Partial Order*”) (“The statutory language prescribes that we allocate costs based on space occupied”); *id.* at 12143 (¶ 78) (“determination of the amount of space occupied” is based on “the amount of space

the last 25 years, the JUA's space allocations were unlawful, unenforceable, and unobserved.³⁸

Yet Duke Florida relied on the excess space allocation to collect exceptionally high rental rates from AT&T.³⁹ And, it continued to use that unlawful allocation to stymie rate negotiations and force AT&T to incur the high cost of this pole attachment litigation to obtain the "just and reasonable" rates based on space "actually occupied," as required by law.⁴⁰

In contrast, Duke Florida's license agreements allow AT&T's competitors [REDACTED]

[REDACTED]⁴¹ within the same space supposedly allocated to AT&T, and the record shows that Duke Florida does in fact routinely sublet that space to—and presumably recover associated rent from—other companies.⁴² AT&T does not have the same opportunity under the JUA to sublet space allocated on its poles to, but not used by, Duke Florida, as Duke Florida uses far more space than it is allocated on AT&T's poles.⁴³ Hence, only

actually occupied"); *In the Matter of Television Cable Serv., Inc.*, 88 FCC.2d 63, 68 (¶ 11) (1981) ("actual physical attachment").

³⁸ *Local Competition Order*, 11 FCC Rcd at 16079 (¶ 1170) ("Permitting an [I]LEC, for example, to reserve space for local exchange service ... would favor the future needs of the [I]LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers."); *see also* Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 25); Reply Ex. C at ATT00289-290 (Peters Reply Aff. ¶ 29); Reply Ex. D at ATT00303, ATT00306-308 (Davis Reply Aff. ¶ 13 & Ex. D-1).

³⁹ *See* Compl. Ex. D at ATT00062-63, ATT00070-71 (Dippon Aff. ¶¶ 31-36, 46); Reply Ex. E at ATT00324-325 (Dippon Reply Aff. ¶¶ 31-32).

⁴⁰ *See FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16); *see also* Answer Ex. 5 at DEF000274 ([REDACTED]
[REDACTED]); *see also* Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 25).

⁴¹ *See, e.g.*, CLEC-2, Ex. D at DEF000337.

⁴² Compl. Ex. C at ATT00044 (Peters Aff. ¶ 25); Reply Ex. C at ATT00289-90 (Peters Reply Aff. ¶ 29); Reply Ex. D at ATT00303, ATT00306-308 (Davis Reply Aff. ¶ 13 & Ex. D-1); *see also* Duke Florida's Supp. Response to Interrog. No. 3, Ex. 1, at DEF000343.

⁴³ Compl. Ex. 1 at ATT00090 (JUA, § 1.1.6(A)) (reserving for Duke Florida's "exclusive use" 8.5 feet on 40-foot poles and 4 feet on 35-foot poles); Answer Ex. C at DEF000165-65,

Duke Florida can—and in fact does—benefit from the JUA’s space allocation to AT&T, by double- and triple-collecting for space already paid for by AT&T, without offset to AT&T.⁴⁴

6. ***Reciprocal Obligations.*** Reciprocal JUA terms impose unique costs on AT&T that Duke Florida’s license agreements do not impose on AT&T’s competitors.⁴⁵ The JUA runs two ways, requiring AT&T to extend to Duke Florida each and every term and condition—whether related to pole installation, permitting, bonding, liability, or assignment of rights—for use of AT&T’s poles that Duke Florida provides AT&T.⁴⁶ AT&T’s competitors “do not own poles” under Duke Florida’s license agreements, and so they need not incur the cost to accommodate Duke Florida’s facilities on poles⁴⁷ or other related responsibilities.⁴⁸

DEF000168 (Burlison Decl. ¶¶ 14-15 & Ex. C-1) (stating that Duke Florida’s “typical vertical three-phase construction” requires 15.1 feet of space); *see also* Reply Ex. C at ATT00280-81 (Peters Reply Aff. ¶ 11).

⁴⁴ Compl. Ex. C at ATT00043-44 (Peters Aff. ¶ 25); Compl. Ex. D at ATT00064 (Dippon Aff. ¶ 34); Reply Ex. C at ATT00289-290 (Peters Reply Aff. ¶ 29); Reply Ex. D at ATT00303, ATT00306-308 (Davis Reply Aff. ¶ 13 & Ex. D-1).

⁴⁵ Compl. Ex. C at ATT00044-45 (Peters Aff. ¶ 26); Compl. Ex. D at ATT00069-70 (Dippon Aff. ¶ 44); Reply Ex. C at ATT00276 (Peters Reply Aff. ¶ 4); Reply Ex. E at ATT00347 (Dippon Reply Aff. ¶ 75).

⁴⁶ Compl. Ex. 1 at ATT00089-110 (JUA).

⁴⁷ Answer Ex. A at DEF000130 (Freeburn Decl. ¶ 9); CLEC-2 § 26 at DEF000323 [REDACTED]; *see also* Ex. 2, Line 6 (Additional license agreement cites).

⁴⁸ *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654) (“A failure to weigh, and account for, the different rights *and responsibilities* in joint use agreement could lead to marketplace distortions.”) (emphasis added); *see also Potomac Edison Order*, 35 FCC Rcd at 13620 (¶ 32) (finding rates unlawful where “[m]any of the terms in the JUA also are reciprocal, so Verizon must give Potomac Edison the same advantages that Potomac Edison provides Verizon.”); *FPL 2020 Order*, 35 FCC Rcd at 5329 (¶ 15) (“FPL overlooks the fact that AT&T must provide many of the same advantages that FPL provides AT&T.”); *Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (requiring utility to prove that the ILEC “receives *net benefits* under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers”) (emphasis added); *Verizon Va. v. Va. Elec. and Power Co.*, 32 FCC Rcd 3750, 3760 (¶ 21) (EB 2017) (“*Dominion Order*”) (holding that electric utility did not justify a rate higher than the new telecom rate “[b]y identifying as alleged ‘benefits’ to Verizon

7. ***Evergreen Provision.*** The JUA’s evergreen provision competitively disadvantages AT&T because it locks in the JUA’s exceptionally high rental rates even after the JUA is terminated⁴⁹ and requires costly litigation for AT&T to obtain rate relief.⁵⁰ AT&T’s competitors, in contrast, are guaranteed much lower new telecom rates by statute, regulation, and license agreement,⁵¹ which “reduce[s] disputes and costly litigation” for them.⁵²

services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements”).

⁴⁹ Compl. Ex. 1 at ATT00103 (JUA § 16.1). Under the evergreen provision, AT&T can maintain its existing attachments on Duke Florida’s poles after the JUA is terminated. AT&T’s competitors also have this right under federal law. *See 47 U.S.C. § 224(f); Local Competition Order*, 11 FCC Rcd at 16059-60 (¶ 1123) (“Pursuant to section 224(f)(1), ... no [pole owner] can ... impede ... the installation and maintenance of telecommunications and cable equipment...”); *id.* at 16074 (¶ 1160) (“[A] utility’s obligation to permit access under section 224(f) does not depend upon the execution of a formal written attachment agreement”); *see also Third Report and Order*, 33 FCC Rcd at 7731 (¶ 50) (federal statutory rights “may not be defeated by private contractual provisions”).

⁵⁰ *See Potomac Edison Order*, 35 FCC Rcd at 13616 (¶ 23) (“even if terminated, [the JUA] would require Verizon to continue paying the JUA rate indefinitely for all existing attachments”); *FPL 2020 Order*, 35 FCC Rcd at 5326 (¶ 11) (“AT&T may not unilaterally terminate the JUA or simply wait for it to expire in order to ‘obtain a different arrangement.’ Nor is AT&T able to obtain a lower rate without FPL’s concurrence, because the JUA states that, unless both parties agree, the rates for joint use poles ‘shall remain in full force and effect.’”); *Verizon Fla. LLC v. Fla. Power & Light Co.*, 30 FCC Rcd 1140, 1150 (¶ 25) (EB 2015) (“*FPL 2015 Order*”) (“*FPL 2015 Order*”) (absent litigation, FPL “could force Verizon to pay the relatively high Agreement Rates for as long as its attachments remain on [FPL]’s poles pursuant to the evergreen clause”); *see also* Reply Ex. A at ATT00252 (Rhinehart Reply Aff. ¶ 24); Reply Ex. B at ATT00267-269 (Miller Reply Aff. ¶¶ 3-4); Reply Ex. C at ATT0076-77 (Peters Reply Aff. ¶ 5).

⁵¹ 47 U.S.C. § 224(e); 47 C.F.R. § 1.1406(d); CATV-4 § 8.1 at DEF000503 [REDACTED]; *see also* Ex. 2, Line 7 (Additional license agreement cites).

⁵² *See Pole Attachment Order*, 26 FCC Rcd at 5317 (¶ 174) (adopting new telecom formula to “reduce disputes and costly litigation” for CLECs and cable companies); *Local Competition Order*, 11 FCC Rcd at 16073 (¶ 1156) (“[W]here access is mandated, the utility must charge all parties an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use”).

B. Duke Florida’s Make-Ready Measurements Are Not Valid, Representative, or Accurate.

Duke Florida’s measurement data falls far short of the standard set by the Commission’s rules, is rife with error, and is irrelevant without comparable data about AT&T’s competitor’s facilities, though it would *reduce* the rate AT&T pays if accepted. Duke Florida describes its measurements as arising from “field surveys,” but those “surveys” evaluated information that is not pertinent to this dispute and do not comprise a statistically valid or representative survey of Duke Florida’s poles required for rate calculations.⁵³

Duke Florida tries to repurpose flawed data collected for an entirely different purpose—“make ready surveys” performed “as part of the attachment process for pole attachment applications submitted by third parties.”⁵⁴ Make-ready surveys occur *before* make-ready work is performed and consequently are outdated snapshots of irrelevant history, as the subsequent make-ready work can often change the location of facilities on a pole.⁵⁵ For example, AT&T

⁵³ 47 C.F.R. § 1.363; *In Re Amend. of Rules & Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6522 (¶ 23 n.103) (2000) (“We have stated that a survey that yields a statistically reliable result would be acceptable.... Such a survey must meet the requirements of Section 1.363 of the Commission’s Rules.”); *In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 72 FCC.2d 59, 79 (¶ 21 n.24) (1979) (“All such sample surveys and statistical studies must meet the standards set forth in Section 1.363(a) of our Rules.”).

⁵⁴ Duke Florida’s Response to Interrog. No. 8; Duke Florida’s Supp. Response to Interrog. No. 8 & Ex. 4 at DEF001394-1409; *see also* Answer Ex. A at DEF000132 (Freeburn Decl. ¶ 12).

⁵⁵ *See Pole Attachment Order*, 26 FCC Rcd at 5252 (¶ 22) (describing the “survey phase” as the first step in pole attachment process when “an engineering study ... determine[s] whether and where attachment is feasible, and what make-ready is required”); *see also* CLEC-2 § 5.3 at DEF000310 [REDACTED].

routinely lowers its facilities as part of the make-ready process,⁵⁶ and in rare cases, Duke Florida replaces a pole to create additional capacity.⁵⁷

Make-ready data, by its nature, also creates a biased sample, evaluating clusters of poles in areas where third-party deployment is active and completely ignoring poles in other areas.⁵⁸ Duke Florida's data includes several poles down a single pole lead and includes poles in just [REDACTED] [REDACTED] counties covered by the JUA.⁵⁹ This is not a representative distribution of poles.

Duke Florida's make-ready data also represents a non-random collection of only [REDACTED] of the 67,569 joint use poles under the JUA and the 62,363 joint use poles owned by Duke Florida.⁶⁰ Duke Florida claimed that the “field surveys [were] performed on 941 DEF poles to which AT&T is attached.”⁶¹ But an inspection of Duke Florida’s underlying data, produced only recently, reveals so many duplicate entries—in the form of duplicate pole tags and GPS coordinates—that it reduces the data to just [REDACTED] unique poles.⁶² And AT&T is *not* even attached to all [REDACTED] poles, meaning that Duke Florida seeks to use measurements of AT&T’s competitor’s

⁵⁶ Reply Ex. C at ATT00285 (Peters Reply Aff. ¶ 19).

⁵⁷ Duke Initial Comments at 16-17 (about 0.024% of electric utility poles required replacement in 2019 due to lack of capacity); CATV-1 § 3.3 at DEF000013.

⁵⁸ See Ex. 5 (Make-ready pole locations as compared to overlapping service area).

⁵⁹ See Duke Florida’s Response to Interrog. No. 8, Ex. 4 (Excel file produced Mar. 3, 2021); Ex. 6 (Make-ready county distribution); *see also In the Matter of Connect Am. Fund*, 34 FCC Rcd 10395, 10406 (¶ 32 n.85) (2019) (“To be statistically valid, the sampled population should be representative of the population and not biased in a systematic manner.”).

⁶⁰ See Joint Statement ¶ 7; *see* Ex. 7 (Unique pole tags).

⁶¹ Answer Ex. A at DEF000132 (Freeburn Decl. ¶ 12); *see also* Duke Florida’s Response to Interrog. No. 8; Duke Florida’s Supp. Response to Interrog. No. 8 & Ex. 4 at DEF001394-1409. Although Mr. Freeburn refers to 941 poles in the survey, the data produced in discovery contains [REDACTED] records.

⁶² See Ex. 7 (Unique pole tags). Duke Florida did not provide location information for the relevant poles until March 3, 2021, about 14 weeks after AT&T filed its Reply. *See* Attachment to Email from E. Langley (Mar. 4, 2021).

facilities to set rates for AT&T.⁶³ Further, even the data for the [REDACTED] unique poles is unreliable, as entries for the same pole contain different measurements, leaving uncertainty as to which duplicate entry is accurate.⁶⁴

Over [REDACTED] poles appear at least 3 times in Duke Florida's data; one pole appears 10 times with such varied measurements that the difference between its "attachment height" and "midspan height" ranges from [REDACTED].⁶⁵ Another pole, which appears 6 times in the data, has 3 different pole heights, ranging from [REDACTED].⁶⁶ Duke Florida also provided no standards for its measurements; even a cursory look at poles in the field⁶⁷ confirms that it alleges exceptionally

⁶³ See, e.g., Ex. 4 (Make-ready pole locations as compared to overlapping service area). The integrity of Duke Florida's field survey data is further called into question by a separate set of data created by Duke Florida's contractor, VentureSum. Although the VentureSum data is supposed to identify the attachers on *all* "DEF poles to which AT&T is attached," it does not include pole tags for [REDACTED] of the poles in the make-ready data ([REDACTED] poles). See Answer Ex. A at DEF000139 (Freeburn Decl. ¶ 28); see also Duke Florida's Supp. Response to Interrog. No. 8, Ex. 3. And of the [REDACTED] pole tags that match across the 2 sets of data, the VentureSum data identifies [REDACTED] pole as AT&T-owned and [REDACTED] other poles as having *no* AT&T attachment. See Duke Florida's Supp. Resp. to Interrog. No. 8, Ex. 3 (Pole Tags [REDACTED])

[REDACTED]).

⁶⁴ See, e.g., Ex. 8 (Data sorted by pole tag); Ex. 9 (Pole tag [REDACTED] example); Ex. 10 (Pole tag [REDACTED] example).

⁶⁵ See Ex. 7 (Unique pole tags); Ex. 9 (Pole tag [REDACTED] example).

⁶⁶ See Ex. 10 (Pole tag [REDACTED] example).

⁶⁷ Duke Florida did not produce location information for the poles until March 3, 2021, which prevented AT&T from completing field reviews in time to rebut Duke Florida's allegations with field evidence in AT&T's November 24, 2020 Reply. See, e.g., Reply Ex. D at ATT00302-303 (Davis Reply Aff. ¶¶ 10-11). AT&T, as a result, relies on publicly available Internet information, for which it has attached a hard copy consistent with the Commission's September 17, 2020 Scheduling Order.

high “midspan height” measurements that are either incorrect or based on the features of the local terrain (such as a rise between two poles)—rather than sag in AT&T’s cable.⁶⁸

Because Duke Florida’s make-ready data is so fundamentally flawed, it must be rejected out of hand. But even if the Commission were to consider the data, the only relevant information it provides relates to pole height. The alleged values for attachment height and midspan height are irrelevant “under the Commission’s rate formula[s],” which calculate rates based on “space occupied” on the pole.⁶⁹ And Duke Florida’s alleged value for the difference between attachment height and midspan height is meaningless “for comparative purposes as [Duke Florida] does not purport to have … the same information [about AT&T]’s competitors.”⁷⁰ In contrast, Duke Florida’s pole height value is an input to the Commission’s rate formulas and is the same for AT&T and all other attachers to the pole. And if Duke Florida’s average pole height of at least █ feet is drawn from the make-ready data and used in place of the Commission’s 37.5-foot presumption, rental rates would decrease.⁷¹

⁶⁸ See Ex. 11 (Google street-view examples). While sag is not pertinent to rate calculations because the Commission sets rates based on actual space occupied and *not* sag, Duke Florida did not even capture sag correctly as these examples depict taut AT&T cables, even where other facilities on the pole (including Duke Florida’s) show significant sag. *See id.*; *see also FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) (“[U]nder the Commission’s rate formula, ‘space occupied’ means space that is ‘actually occupied’”); *Consolidated Partial Order*, 16 FCC Rcd at 12143 (¶ 77) (“The statutory language prescribes that we allocate costs based on space occupied, not load capacity.”).

⁶⁹ See *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16); *see also*, Section C.1, below.

⁷⁰ Letter Ruling at 3, *Verizon Md. v. Potomac Edison*, Proceeding No. 19-355 (May 22, 2020).

⁷¹ 47 C.F.R. § 1.1410 (“The pole height is presumed to be 37.5 feet.”). Due to the duplicates in the make-ready data, there are different pole heights indicated for the same pole. When the lowest pole height for each unique pole is used, Duke Florida’s average pole height is █ feet; when the highest value is used, its average pole height increases to █ feet. *See Ex. 12 (Pole height calculation)*.

C. AT&T Correctly Calculated the New and Old Telecom Rates.

The properly calculated new telecom rate is about \$5 per pole and the properly calculated old telecom rate is about \$7.50 per pole because, by rule, the old telecom rate is about 1.5 times the new telecom rate.⁷² Duke Florida argues that rates up to [REDACTED] higher should result from these formulas,⁷³ but its calculations violate the Commission's regulations and orders in at least three respects.⁷⁴

1. Space Occupied and Calculation of Per-Pole Rates

The proper input for space occupied by AT&T is the 1-foot value established by the Commission's regulations.⁷⁵ Duke Florida rejects longstanding Commission precedent to incorrectly claim that AT&T occupies [REDACTED] feet of space by combining 3.33 feet of safety space that "should not be attributed to AT&T"⁷⁶ with [REDACTED] feet calculated using its flawed make-ready

⁷² 47 C.F.R. § 1.1406(d); *see also* Reply Ex. A at ATT00241 (Rhinehart Aff. ¶ 5 n.12).

⁷³ Duke Florida alleges that the 2019 new telecom rate should be [REDACTED] per pole, which is more than [REDACTED] higher per pole than a properly calculated new telecom rate, and that the 2019 old telecom rate should be [REDACTED] per pole, which is nearly [REDACTED] per pole higher than a properly calculated old telecom rate. *See Answer ¶¶ 12, 22.*

⁷⁴ To reduce areas of dispute, AT&T stipulated for purposes of this case to certain inputs that do not have a material impact on the resulting rate. While the properly calculated new and old telecom rates remain those in AT&T's pleadings, *see Compl. Ex. A at ATT00003-07, ATT00013-14 (Rhinehart Aff. ¶¶ 4-11, 16-17 & Ex. R-1); Reply Ex. A at ATT00239-247, ATT00259-260 (Rhinehart Reply Aff. ¶¶ 2-16 & Ex. R-5)*, AT&T's stipulations produce new telecom rates for the 2015 through 2020 rental years of \$5.30, \$5.28, \$5.32, \$5.16, \$4.90, and \$5.38 per pole, respectively, and old telecom rates of \$8.02, \$8.01, \$8.06, \$7.83, \$7.43, and \$8.16 per pole, respectively. *See Ex. 4.*

⁷⁵ 47 C.F.R. § 1.1410.

⁷⁶ *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) (emphasis added).

data.⁷⁷ Duke Florida also multiplies the new telecom rate by [] feet of space to calculate a per-pole rate.⁷⁸ Duke Florida is wrong at each step.

First, the safety space is attributable to Duke Florida, not to AT&T. Commission rules permit Duke Florida to charge attachers only for the physical space occupied by their attachments on the pole,⁷⁹ which is the “Space Occupied” input to the “Space Factor” in each FCC rate formula.⁸⁰ Consistent therewith, “the Commission has long held that the communication safety space is for the benefit of the electric utility, not communications attachers.”⁸¹ Duke Florida acknowledges that it cannot charge AT&T’s competitors for the safety space because it “is usable and used by the electric utility.”⁸² Yet, in an effort to perpetuate the excessive rental rates it has long charged AT&T, Duke Florida argues that AT&T is the cause of and should be allocated that safety space, despite the Enforcement Bureau’s numerous (and recent) contrary rulings.⁸³ The Commission should disregard Duke Florida’s plea to ignore its prior rulings.

⁷⁷ See Section II, above; *see also* Answer Ex. A at DEF000132 (Freeburn Decl. ¶ 12).

⁷⁸ See Answer ¶ 12.

⁷⁹ *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16) (“[Safety] space should *not* be attributed to AT&T because ... AT&T’s attachments do not actually occupy the communications safety space.”) (emphasis added).

⁸⁰ 47 C.F.R. § 1.1406(d)(2) (calculating new telecom rates based on “Space Occupied”); *see also* 47 C.F.R. § 1.1406(d)(1) (calculating cable rates based on “Space Occupied”); 47 C.F.R. § 1.1409(e)(2) (2010) (calculating old telecom rates based on “Space Occupied”).

⁸¹ *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16).

⁸² Answer ¶ 12 n.34 (“Given that the Commission has already determined that CATV and CLEC attachers should not bear this cost, this cost must fall to AT&T”); *see also Consolidated Partial Order*, 16 FCC Rcd at 12130 (¶ 51) (holding “the 40-inch safety space ... is usable and used by the electric utility”); *Television Cable Serv., Inc. v. Monongahela Power Co.*, 88 FCC.2d 63, 68 (¶¶ 10-11) (1981) (rejecting argument that “the 40-inch safety space” should be added “to the 12 inches regularly allotted to [a cable attacher] to compute the space occupied”).

⁸³ See Answer ¶¶ 12, 16, 25, 31. In fact, the “safety space” is rarely even adjacent to AT&T’s facilities, which are typically the lowest on the pole, whereas the safety space divides Duke

Second, Duke Florida’s make-ready measurements do not rebut the Commission’s presumptive space occupied input because they are not statistically valid or accurate for reasons detailed above.⁸⁴ They are also legally irrelevant. Duke Florida argues that AT&T should be charged for unoccupied space *below* AT&T’s facilities if the facilities are not attached at the absolute lowest point possible on the poles.⁸⁵ But under the Commission’s rate formula, ‘space occupied’ means space ‘actually occupied’ on—*i.e.*, the “actual physical attachment” to—the poles.⁸⁶ AT&T’s attachments do not “actually occupy” space below its attachments.⁸⁷ And Duke Florida’s measurements fail to even show how high AT&T’s facilities are placed above the lowest point possible on a pole. Duke Florida did not determine the ground clearance required at any location; instead, it relies on a *presumption* that the average minimum ground clearance is 18 feet.⁸⁸ Even if that presumption were true on the facts of this case (Duke Florida has put forward no evidence establishing that it is), that is just a minimum and does not establish the appropriate

Florida’s facilities from the highest communications attachments on the pole. *See* Reply Ex. C at ATT00283-284 (Peters Reply Aff. ¶ 17); Reply Ex. E at ATT00320-321 (Dippon Reply Aff. ¶ 22).

⁸⁴ See Section II, above.

⁸⁵ See Answer ¶ 12, 16, 25, 31; Answer Ex. A at DEF000130 (Freeburn Decl. ¶ 8); *id.* at DEF000132 (Freeburn Decl. ¶ 12) (stating that [redacted] feet was the difference between the “average height of AT&T’s highest attachment” and 18 feet, which Duke Florida says is “generally” the “lowest point of attachment” on a pole).

⁸⁶ *FPL 2020 Order*, 35 FCC Rcd at 5330 (¶ 16); *Television Cable Serv.*, 88 FCC.2d at 68 (¶ 11).

⁸⁷ *Potomac Edison Order*, 35 FCC Rcd at 13624 (¶ 37) (rejecting assumption that an ILEC occupies space below its attachments).

⁸⁸ *In re Amendment of Rules & Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6465 (¶ 16) (2000) (cited at Answer ¶ 12). Ground clearance is highly variable. *See id.* at 6468 (¶ 23) (noting that electric utilities argued that “the lowest attachment on a pole must be at least 19’8” from the ground” and finding an average 18 foot figure accounts for site-specific variables, “such as differing pole heights, … whether the wires or cables cross over railroad tracks, roads, or driveways and the amount of voltage transferred through the cables”); *see also* Reply Ex. C at ATT00285-286 (Peters Reply Aff. ¶¶ 20-22); Reply Ex. D at ATT00301-302 (Davis Reply Aff. ¶¶ 10-11).

or approved height for any given attachment on a utility pole.⁸⁹ Mere conjecture is not evidence sufficient to rebut the Commission’s 1-foot space occupied presumption.

Third, Duke Florida improperly multiplies its new telecom rates by its alleged space occupied input of █ feet,⁹⁰ which would be improper even if Duke Florida had valid survey data showing that AT&T occupied more than 1 foot of space, on average, on Duke Florida’s poles.⁹¹ If a pole owner has sufficient survey data to show that an attacher occupies more than 1 foot of space, on average, it may adjust the “space occupied” input in the rate formula to account for that additional space—as Duke Florida’s witness did when calculating old telecom rates in her declaration.⁹² A pole owner may *not* multiply a 1-foot telecom rate (new or old) by the amount of space occupied. As the Commission has made clear for decades, doing so would violate the statutory requirement that the unusable space on the pole be equally divided among attaching entities without regard to the amount of pole space occupied, and would allow Duke Florida to substantially over-recover.⁹³

⁸⁹ See, e.g., CLEC-2 at DEF000334 [REDACTED]; see also Reply Ex. C at ATT00285-286 (Peters Reply Aff. ¶¶ 21-22).

⁹⁰ Answer ¶ 12.

⁹¹ See Reply Ex. A at ATT00246 (Rhinehart Reply Aff. ¶ 13); Reply Ex. E at ATT00319-320 (Dippon Reply Aff. ¶ 20).

⁹² See Answer Ex. D at DEF000174 (Olivier Decl. ¶ 13); see also 47 C.F.R. § 1.1406(d); Reply Ex. A at ATT00246 (Rhinehart Reply Aff. ¶ 13); Reply Ex. E at ATT00319-320 (Dippon Reply Aff. ¶ 20).

⁹³ 47 U.S.C. § 224(e)(2) (requiring “equal apportionment of [unusable space] costs among all attaching entities”); see also *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777, 6805 (¶ 57) (1998) (rejecting proposal “that entities using more than one foot be counted as a separate entity for each foot or increment thereof” because “[w]e are ... convinced that the alternative proposal is inconsistent with the plain meaning of Section 224(e) which apportions the cost of unusable space ‘under an equal apportionment of such costs among all attaching entities.’”); see also *id.* at 6800 (¶ 45) (“Under Section 224(e)(2), the number of attaching entities is significant because the costs of the

2. Average Number of Attaching Entities

The proper input for the average number of attaching entities on Duke Florida's poles is 5 because Duke Florida has not "establish[ed] its own presumptive average" to use when calculating rates for "all attaching entities" as required.⁹⁴ Duke Florida instead asks to single-out AT&T for a [redacted] attaching entity value,⁹⁵ but this selective use of a generally applicable input is not permitted under the Commission's regulations.⁹⁶

Duke Florida also lacks accurate and reliable data to support its alleged [redacted] value. It relies on a table with the findings of its contractor, VentureSum,⁹⁷ without any of the information needed to assess the reliability or accuracy of those findings absent a full field review of [redacted] poles.⁹⁸ Some flaws, however, are apparent without a field review.⁹⁹ VentureSum's findings, for example, state that [redacted] poles surveyed have 5 or more attaching entities, but the data that is supposed to substantiate that report includes more than twice as many poles with 5 or more

unusable space assessed to each entity decreases as the number of entities increases."); Reply Ex. A at ATT00246 (Rhinehart Reply Aff. ¶ 13).

⁹⁴ 47 C.F.R. § 1.1409(d) (emphasis added). The presumptive input of 5 applies because the parties' overlapping service areas includes Orlando, Gainesville, and Palm Bay, Florida, which are urbanized areas with a population greater than 50,000. 47 C.F.R. § 1.1409(c); *see also* Compl. Ex. A at ATT00004-05 (Rhinehart Aff. ¶¶ 6-7); Compl. Ex. B at ATT00025 (Miller Aff. ¶ 6).

⁹⁵ Compare Answer Ex. A at DEF000139 (Freeburn Decl. ¶ 28) with Interrog. Resp., Ex. 1 at DEF000002 (calculating rates for AT&T's competitors using the FCC's presumptive inputs).

⁹⁶ See 47 C.F.R. § 1.1409(d).

⁹⁷ See Duke Florida's Supp. Response to Interrog. 8, Exs. 3, 5 at DEF001411.

⁹⁸ See 47 C.F.R. § 1.363(b) (requiring "a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection"); *see also* AT&T Interrogatory No. 8 (requesting all data, including "the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, [and] guidelines upon which the data was collected"). AT&T does not otherwise have access to this information. See AT&T Interrogatories, p.1; Reply Ex. A at ATT00355 (Rhinehart Reply Aff. ¶ 14).

⁹⁹ See Duke Florida's Supp. Response to Interrog. 8, Exs. 3, 5 at DEF001411.

attaching entities.¹⁰⁰ VentureSum's data is also incomplete, as it omits over [REDACTED] Duke poles with AT&T attachments.¹⁰¹ Furthermore, of the [REDACTED] poles included in the make-ready data, only [REDACTED] can be matched approximately by location in the VentureSum data, leaving [REDACTED] unmatched.¹⁰² And so, without accurate or properly supported data under the Commission's rules, the correct input for the average number of attaching entities is the Commission's presumptive input of 5.¹⁰³

3. Cost Inputs

When calculating its net bare pole cost and carrying charge rate, Duke Florida departs from the FCC's methodology in 2 ways. *First*, for the "Gross Plant Investment (Total Plant)" input to the administrative and taxes elements of the carrying charge, Duke Florida excludes portions of its plant investment (namely, plant leased to others, held for future use, construction work in progress, and acquisition adjustments).¹⁰⁴ But "Gross Plant Investment (Total Plant)"¹⁰⁵ by definition requires the entirety (*i.e.*, the total) of Duke Florida's investment¹⁰⁶ and Duke

¹⁰⁰ Compare Duke Florida's Supp. Response to Interrog. 8, Ex. 3 (showing [REDACTED] Duke Florida poles with AT&T attachments as having 5 or more attaching entities) *with id.*, Ex. 5 at DEF001411 (reporting that [REDACTED] Duke Florida poles with AT&T attachments have 5 or more attaching entities).

¹⁰¹ The VentureSum data includes [REDACTED] Duke poles with AT&T attachments, but AT&T is attached to approximately 62,363 Duke poles. *See Joint Statement ¶ 7.*

¹⁰² *See Section II*, above.

¹⁰³ 47 C.F.R. § 1.1409(c).

¹⁰⁴ *See Ex. 13 (Line No. 8(c), FERC Form 1, p.200).* Duke Florida, however, pairs the lesser investment with the depreciation associated with its total plant investment. *See id.* (Line No. 14(c), FERC Form 1, p. 200).

¹⁰⁵ *See Consolidated Partial Order*, 16 FCC Rcd at 12176 (App. E-2) (emphasis added); *see also, e.g., id.* at (¶ 41) ("gross total plant").

¹⁰⁶ *See Black's Law Dictionary* (11th ed. 2019) (defining "total" as "[w]hole; not divided; full; complete").

Florida earns a return on the amounts it seeks to exclude from its calculation.¹⁰⁷ AT&T, therefore, correctly uses the Duke Florida’s “Total Utility Plant” investment, which includes these amounts.¹⁰⁸

Second, AT&T correctly followed the FCC’s methodology when calculating the numerator of the taxes element of the carrying charge, which is calculated as “Accounts 408.1 + 409.1 + 410.1 + 411.4 - 411.1.”¹⁰⁹ In contrast, Duke Florida fashioned its own approach, which adds certain taxes drawn from FERC Account 408.1 (specifically, “payroll, property, miscellaneous, & franchise”) to develop an initial tax carrying charge rate factor to which it then adds a statutory rate gross-up “Federal & State Income Tax Component.”¹¹⁰ Duke Florida considers its approach “clear and accurate,”¹¹¹ but it is far from it. More importantly, it is not the approach the Commission adopted and does not reflect actual income taxes paid.

4. To Reduce Areas of Dispute, AT&T Stipulated to the Rest of Duke Florida’s Inputs, Including Its Rate of Return.

Although AT&T detailed additional disagreements with Duke Florida’s rate calculations in its Reply, it has reduced areas of dispute for the Commission by stipulating to the remaining

¹⁰⁷ See Ex. 16 (Earnings Surveillance Report, Section 2, page 1) (including “Future Use & Appd Unrecov Plant” and “Const Work in Progress” in rate base).

¹⁰⁸ See Ex. 13 (Line No. 13(c), FERC Form 1, p.200).

¹⁰⁹ See *Consolidated Partial Order*, 16 FCC Rcd at 12176 (App. E-2).

¹¹⁰ See Duke Florida’s Response to Interrog. No. 1, Ex. 1 at DEF00002, DEF00004, DEF000006 (§§ III.A, 3a and 3b, but omitting “attached Cost of Capital spreadsheet”); *see also* Answer Ex. D at DEF000174 (Olivier Decl. ¶ 12) (stating that Duke Florida “grosses up the equity component of our weighted average cost of capital (‘WACC’) by the statutory tax rate”). *But see 2000 Report and Order*, at 6490 (¶ 73) (“We do not believe the statutory Federal income tax rate, rather than actual taxes paid, should be used in calculating the taxes element of the carrying charge rate factor”).

¹¹¹ Answer Ex. D at DEF000174 (Olivier Decl. ¶ 12).

inputs for purposes of this case only because they only minimally impact the rates.¹¹² This includes Duke Florida’s treatment of accumulated deferred income taxes as a zero-cost source of capital (instead of a reduction to the rate base),¹¹³ and the resulting rates of return. For the 2015 to 2020 rate years, therefore, the rate of return element of the carrying charge is 7.02%, 6.90%, 6.65%, 6.68%, 6.54%, and 6.27%, respectively.¹¹⁴

These values were calculated using data from Duke Florida’s Earnings Surveillance Reports (“ESRs”), which are on file with the Florida Public Service Commission (“PSC”).¹¹⁵ The Florida PSC announced the methodology for calculating Duke Florida’s rate of return in a stipulation entered in 2012, which is applicable to all years at issue in this case.¹¹⁶ Thus, the rates of return used by Duke Florida and stipulated to by AT&T are the proper rates of return applicable to all the years in dispute in this proceeding.¹¹⁷

¹¹² See Letter Order at 2 (“We encourage the parties to stipulate to the value of as many inputs as possible.”). The sole exception is the 2014 value for General and Administrative Expense. See Ex. 4. Duke Florida uses a value it replaced in a revised FERC Form 1 for 2014.

¹¹³ But see *Consolidated Partial Order*, 16 FCC Rcd at 12176 (App. E-2) (treating accumulated deferred income taxes as a reduction to the rate base).

¹¹⁴ Resp. to Interrog. No. 7; see also Answer Ex. D at DEF000173 (Olivier Decl. ¶ 8).

¹¹⁵ See *id.* at DEF000172 (Olivier Decl. ¶ 8).

¹¹⁶ See Ex. 14 (2012 PSC Order, Stipulation ¶¶ 1-2). Duke Florida’s “weighted average cost of debt and equity” would still be “the proper cost of capital figure” even if the Florida PSC did not “announce[] this figure,” *Multimedia Cablevision, Inc. v. Sw. Bell Tel. Co.*, 11 FCC Rcd 11202, 11215 (¶ 36) (1996), because the Commission decided to no longer require a “state authorized rate of return” when it amended the pole attachment rules in 2018, *see In the Matter of Amendment of Procedural Rules Governing Formal Complaint Proceedings*, 33 FCC Rcd 7178, 7186-87 (¶ 24) (2018) (deleting use of a default rate of return in the absence of a state authorized rate of return).

¹¹⁷ Prior to the stipulation, Duke Florida’s rate of return was set at 7.88% in a 2010 base rate proceeding. See Ex. 15 (2010 Order at 95) (“[W]e find that the appropriate weighted average cost of capital for [Duke Florida, then known as Progress Energy Florida] for purposes of setting rates in this proceeding is 7.88 percent.”); see also Resp. to Interrog. No. 7 (“The Florida Public Service Commission has previously authorized a higher rate of return for DEF—7.88%.”).

III. CONCLUSION

For the foregoing reasons, and those detailed in AT&T's other filings, AT&T respectfully requests that the Commission grant AT&T's Pole Attachment Complaint in full.

Respectfully submitted,

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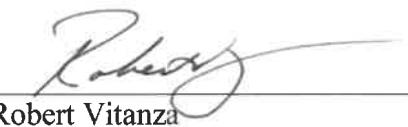
By: 
Robert Vitanza
David J. Chorzempa
David Lawson
AT&T SERVICES, INC.
1120 20th Street NW, Suite 1000
Washington, DC 20036
(214) 757-3357

*Attorneys for BellSouth Telecommunications,
LLC d/b/a AT&T Florida*

Dated: April 8, 2021

RULE 1.721(M) VERIFICATION

I, Robert Vitanza, as signatory to this submission, hereby verify that I have read this Initial Supplemental Brief and, to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.



Robert Vitanza

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021, I caused a copy of the foregoing Initial Supplemental Brief to be served on the following (service method indicated):

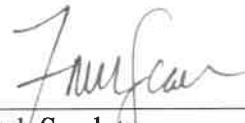
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9050 Junction Drive
Annapolis Junction, MD 20701
(confidential version by overnight delivery;
public version by ECFS)

Rosemary H. McEnergy
Michael Engel
Lisa Boehley
Lisa B. Griffin
Lisa J. Saks
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
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Birmingham, AL 35223
(confidential and public versions by email)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(public version by overnight delivery)



Frank Scaduto

**Before the
Federal Communications Commission
Washington, DC 20554**

BELLSOUTH
TELECOMMUNICATIONS, LLC
d/b/a AT&T FLORIDA,

Complainant,

v.

DUKE ENERGY FLORIDA, LLC,

Defendant.

Proceeding No. 20-276
Bureau ID No. EB-20-MD-003

INITIAL SUPPLEMENTAL BRIEF EXHIBITS

1. License Agreement Designations and Associated Bates Nos.
2. Additional License Agreement Cites Substantiating AT&T's Competitive Disadvantages Under the JUA
3. Joint Summary of Agreed-Upon or Stipulated Inputs
4. Updated Rate Calculations, Showing Agreed-Upon, Stipulated, and Disputed Inputs
5. Pole Locations from Duke Florida's Make-Ready Data as Compared to the Parties' Overlapping Service Area
6. Pole Location Distribution throughout Counties Served by Both Parties
7. [REDACTED] Unique Pole Tags in Duke Florida's Make-Ready Data
8. Duke Florida's Make-Ready Data Sorted by Pole Tag
9. Duke Florida's Make-Ready Data regarding Pole Tag [REDACTED]
10. Duke Florida's Make-Ready Data regarding Pole Tag [REDACTED]
11. Google Street View Examples of Poles in Duke Florida's Make-Ready Data
12. Calculation of Pole Heights from Duke Florida's Make-Ready Data
13. Page 200 of Duke Florida's FERC Form 1

PUBLIC VERSION

14. Florida Public Service Commission Order Approving Stipulation and Settlement Agreement (Aug. 16, 2012)
15. Relevant Excerpts from the Florida Public Service Commission's Final Order Denying Rate Increase (Mar. 5, 2010)
16. Duke Florida's Year-End 2019 Earnings Surveillance Report (Feb. 14, 2020)

Exhibit 1

PUBLIC VERSION

License Agreement Designations

Agreement	Bates Number Range
CATV-1	DEF000010-DEF000027
CATV-2	DEF000345-DEF000364
CATV-3	DEF000365-DEF000395
CATV-4	DEF000490-DEF000515
CATV-5	DEF000516-DEF000541
CATV-6	DEF000542-DEF000565
CATV-7	DEF000566-DEF000593
CATV-8	DEF000641-DEF000663
CATV-9	DEF000763-DEF000789
CATV-10	DEF000857-DEF000876
CATV-11	DEF000877-DEF000901
CATV-12	DEF001024-DEF001042
CATV-13	DEF001043-DEF001072
CATV-14	DEF001124-DEF001151
CATV-15	DEF001198-DEF001221
CLEC-1	DEF000028-DEF000073
CLEC-2	DEF000296-DEF000341
CLEC-3	DEF000396-DEF000437
CLEC-4	DEF000438-DEF000460
CLEC-5	DEF000461-DEF000489
CLEC-6	DEF000664-DEF000691
CLEC-7	DEF000692-DEF000716
CLEC-8	DEF000717-DEF000740
CLEC-9	DEF000741-DEF000762
CLEC-10	DEF000790-DEF000810
CLEC-11	DEF000811-DEF000856
CLEC-12	DEF000945-DEF000973
CLEC-13	DEF000974-DEF001002
CLEC-14	DEF001003-DEF001023
CLEC-15	DEF001073-DEF001099
CLEC-16	DEF001100-DEF001123
CLEC-17	DEF001152-DEF001177
CLEC-18	DEF001178-DEF001197
CLEC-19	DEF001222-DEF001250
CLEC-20	DEF001297-DEF001323
CLEC-21	DEF001324-DEF001391
WIRELESS-1	DEF000074-DEF000120
WIRELESS-2	DEF000594-DEF000640
WIRELESS-3	DEF000902-DEF000944
WIRELESS-4	DEF001251-DEF001296

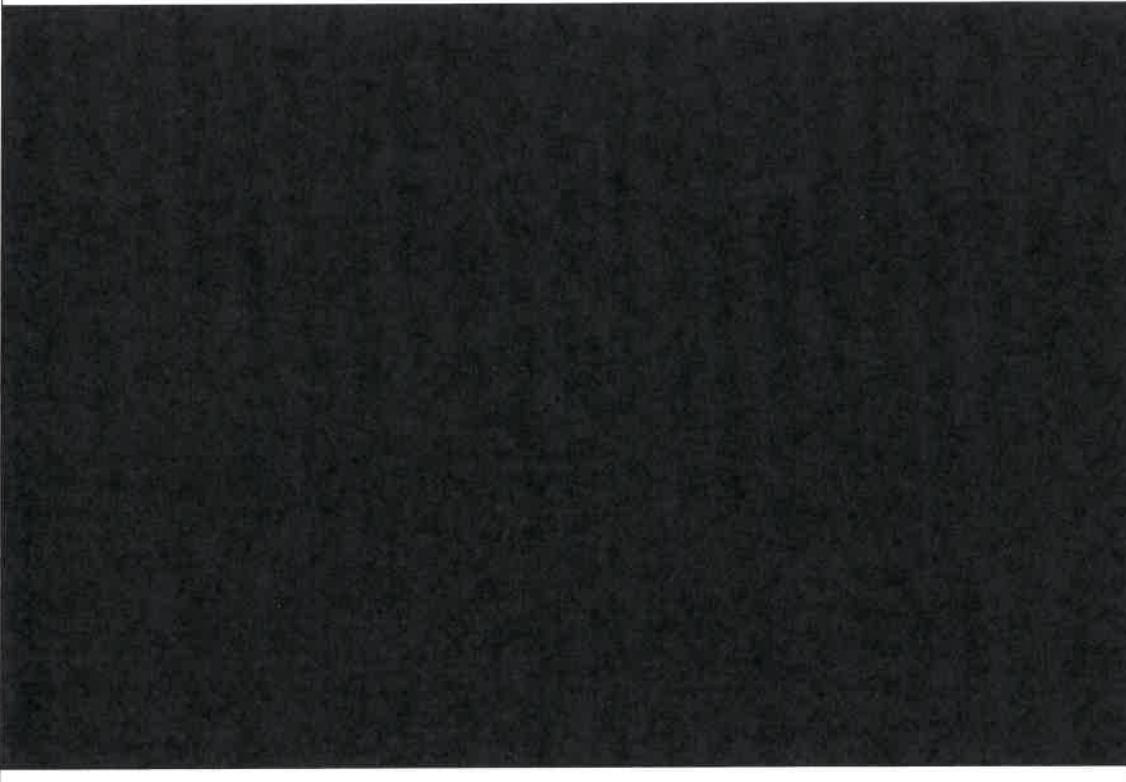
Exhibit 2

Additional License Agreement Cites Substantiating
AT&T's Competitive Disadvantages Under the JUA

1. AT&T has less advantageous contractual access to Duke Florida's poles that can be denied or terminated at any time and for any reason. *See Br. § I.A.1; Compl. Ex. 1 at ATT00092, ATT00102-103 (JUA §§ 2.2, 3.1, 16.1).*

In contrast, AT&T's competitors have a permanent statutory right of access to Duke Florida's poles and, in the limited situation where access could be denied under federal law because there is insufficient pole capacity, [REDACTED]

[REDACTED] *See Br. § I.A.1; 47 U.S.C. § 224(f).*



2. AT&T bears the burdens of pole ownership and maintenance under the JUA. *See Br. § I.A.2; Compl. Ex. 1 at ATT0009-97 (JUA §§ 4.7, 81).*

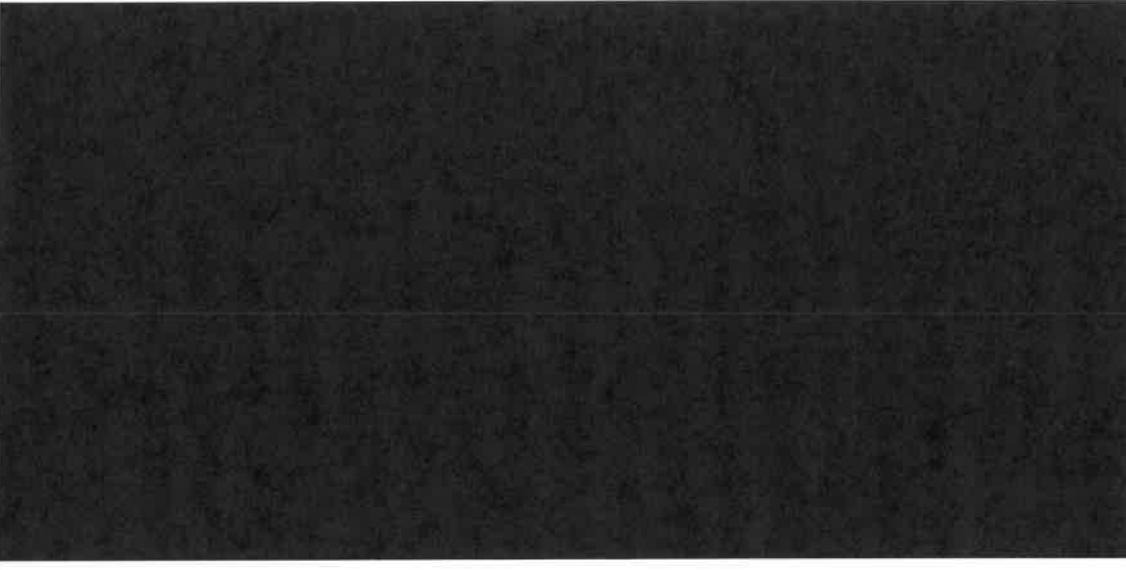
In contrast, AT&T's competitors do not own poles under Duke Florida's license agreements or bear the associated pole ownership and maintenance costs. *See Br. § I.A.2.*



	<p>3. The JUA does not provide for timely make-ready when other attachers must modify (e.g., move or transfer) their facilities before AT&T can attach its facilities to Duke Florida's poles. <i>See</i> Br. § I.A.3; Compl. Ex. 1 at ATT00092 (JUA § 3.1). In contrast, AT&T's competitors are guaranteed timely pole access and are protected by the Commission's one-touch make-ready option, make-ready deadlines, and self-help remedies. <i>See</i> Br. § I.A.3; 47 U.S.C. § 224(f); 47 C.F.R. § 1.1411.</p> <p>4. The JUA's allocation of space to AT&T at the bottom of the communications space subjects AT&T to higher transfer and repair costs, which it has tried to eliminate by encouraging the placement of facilities lower on the pole. <i>See</i> Br. § I.A.4; Compl. Ex. 1 at ATT00090 (JUA § 1.1.6(B)). In contrast, AT&T's competitors may attach their facilities above AT&T's facilities, where they may complete transfer work earlier and where the facilities are less susceptible to damage. <i>See</i> Br. § I.A.4.</p>
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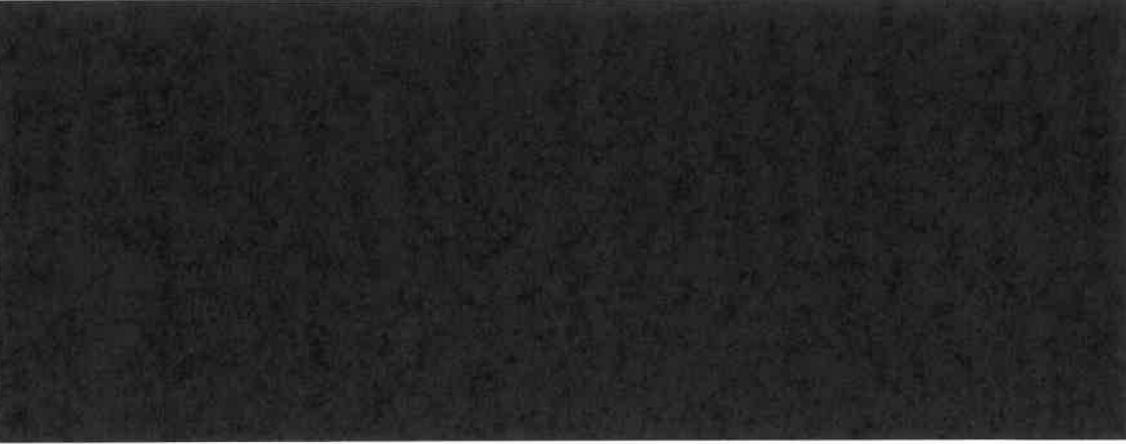
5. The JUA allocates excess space to AT&T that AT&T does not need, want, or use, and that is not “reserved” for AT&T, as the Commission found such space reservations unlawful in 1996. *See Br. § I.A.5; Compl. Ex. 1 at ATT00090 (JUA § 1.1.6(B)).*

In contrast, AT&T’s competitors are provided as much space as they require, including space required to accommodate multiple attachments, and are charged *only* for the space they actually occupy. *See Br. § I.A.5; 47 C.F.R. § 1.1406(d)(2).*



6. The JUA requires AT&T to extend to Duke Florida each and every term and condition—whether related to pole installation, permitting, bonding, liability, or assignment of rights—for use of AT&T’s poles that Duke Florida provides AT&T. *See Br. § I.A.6; see also Compl. Ex. 1 at ATT00089-110 (JUA).*

In contrast, AT&T’s competitors are not required to extend these “reciprocal” terms and conditions to Duke Florida because they do not own poles under Duke Florida’s license agreements. *See Br. § I.A.6.*



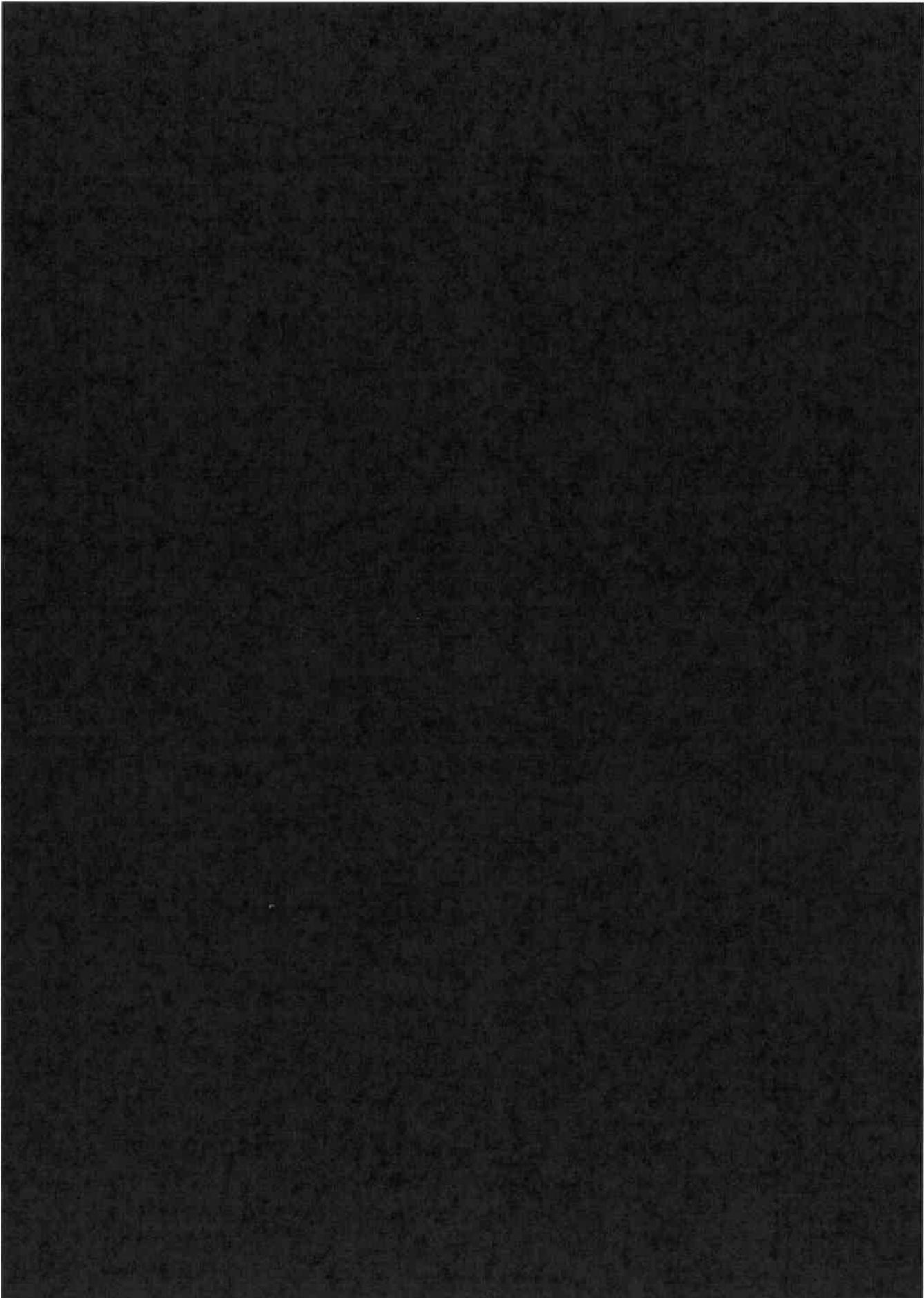
7. The JUA's evergreen provision locks in the JUA's exceptionally high rental rates even after the JUA is terminated and requires costly litigation for AT&T to obtain rate relief. *See Br. § I.A.7; see also Compl. Ex. 1 at ATT00103 (JUA § 16.1).*

In contrast, AT&T's competitors are guaranteed much lower new telecom rates by statute, regulation, and license agreement, which reduces disputes and costly litigation for them. *See Br. § I.A.7.*

PUBLIC VERSION

Exhibit 3

PUBLIC VERSION



PUBLIC VERSION

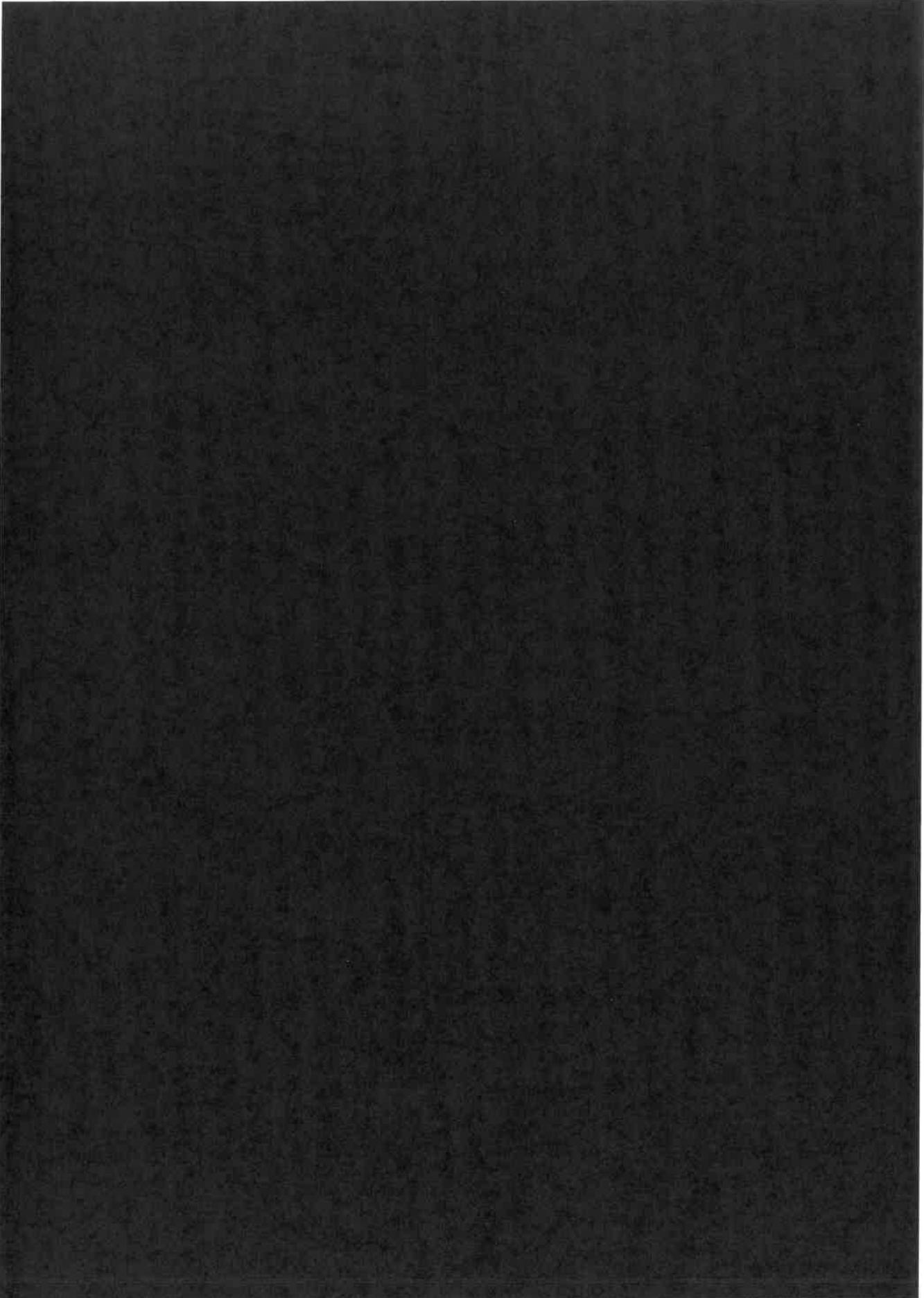
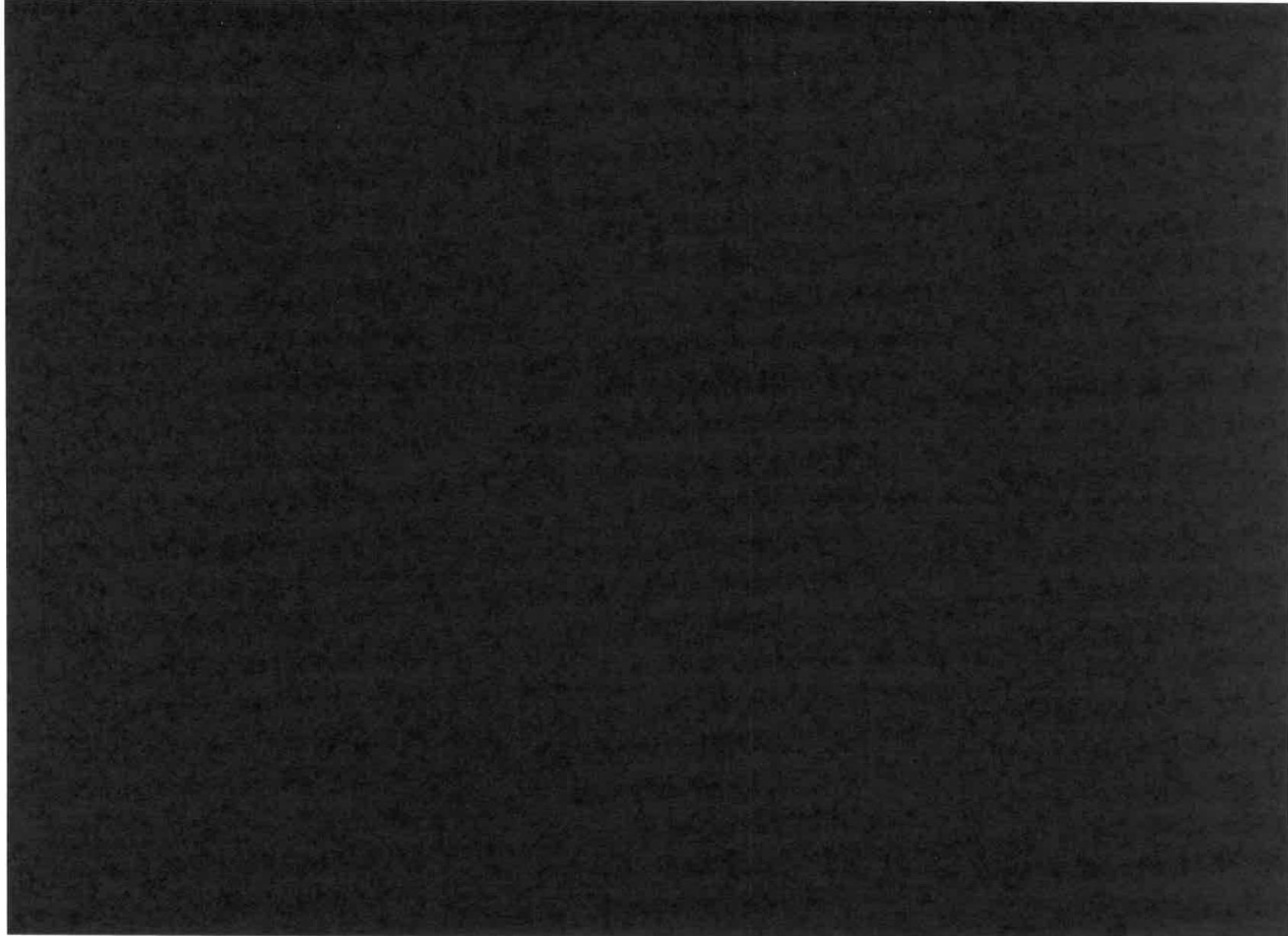


Exhibit 4

PUBLIC VERSION

Per-Pole Rate Calculations for AT&T Florida's Use of Duke Energy Florida's Poles Using Agreed-Upon, Stipulated*, and Disputed Inputs (Page 1 of 2)

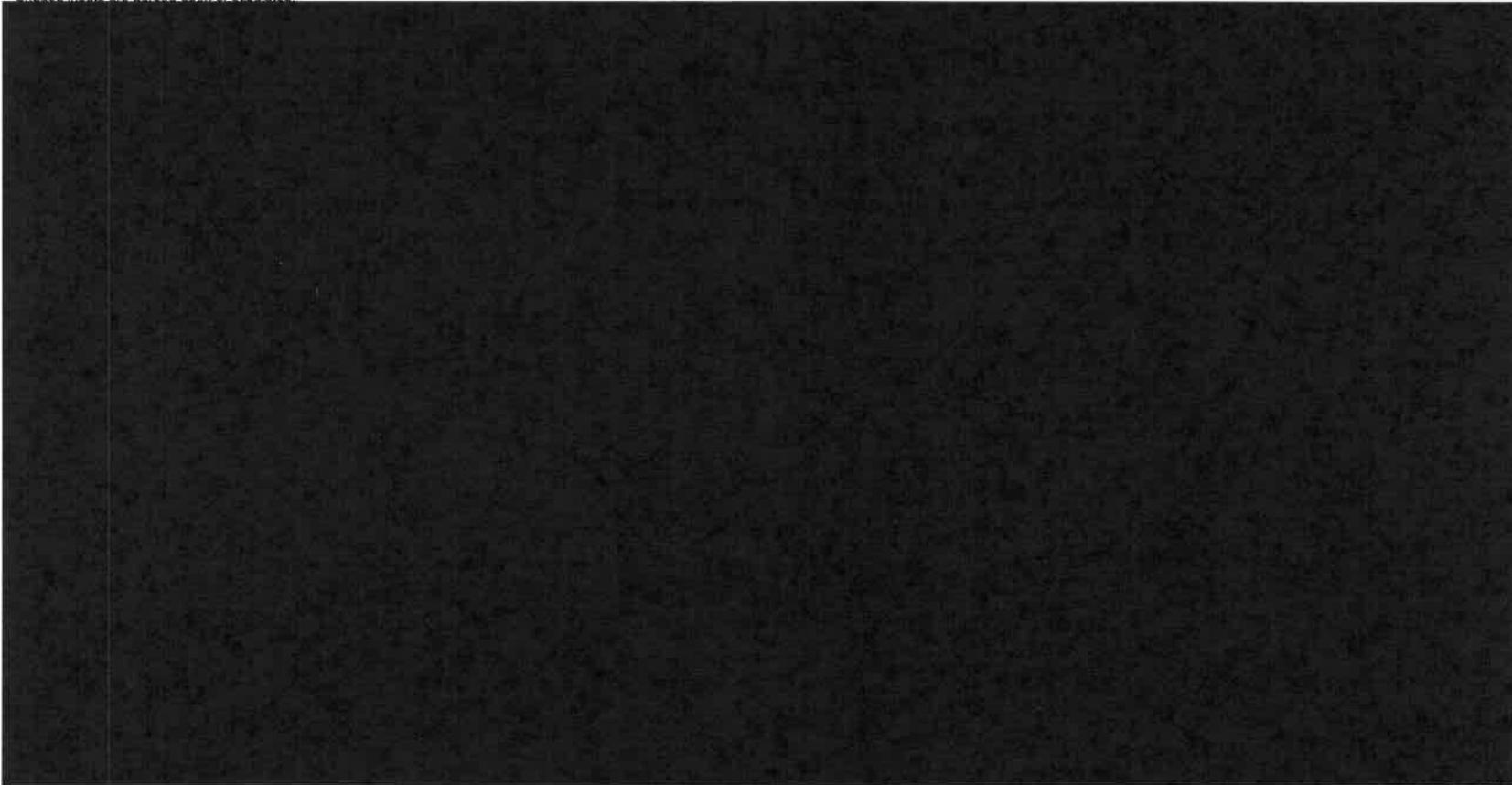
*AT&T does not agree that the stipulated inputs are correct, but stipulates to their use for purposes of this case to reduce areas of dispute because of their minimal impact on the resulting rate.
Shaded inputs are agreed-upon or stipulated.



PUBLIC VERSION

**Per-Pole Rate Calculations for AT&T Florida's Use of Duke Energy Florida's Poles
Using Agreed-Upon, Stipulated*, and Disputed Inputs (Page 2 of 2)**

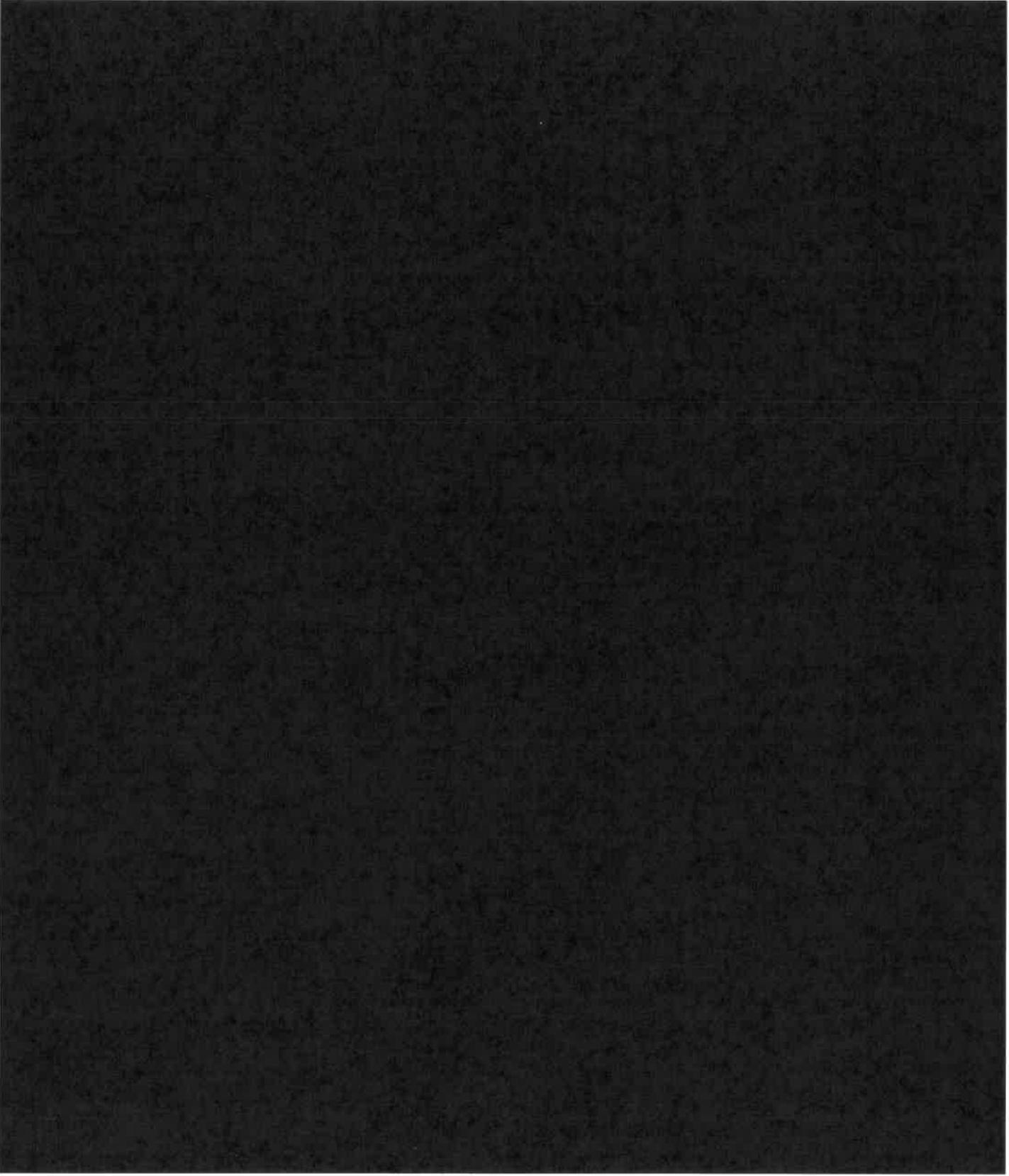
*AT&T does not agree that the stipulated inputs are correct, but stipulates to their use for purposes of this case to reduce areas of dispute because of their minimal impact on the resulting rate.
Shaded inputs are agreed-upon or stipulated.



PUBLIC VERSION

Exhibit 5

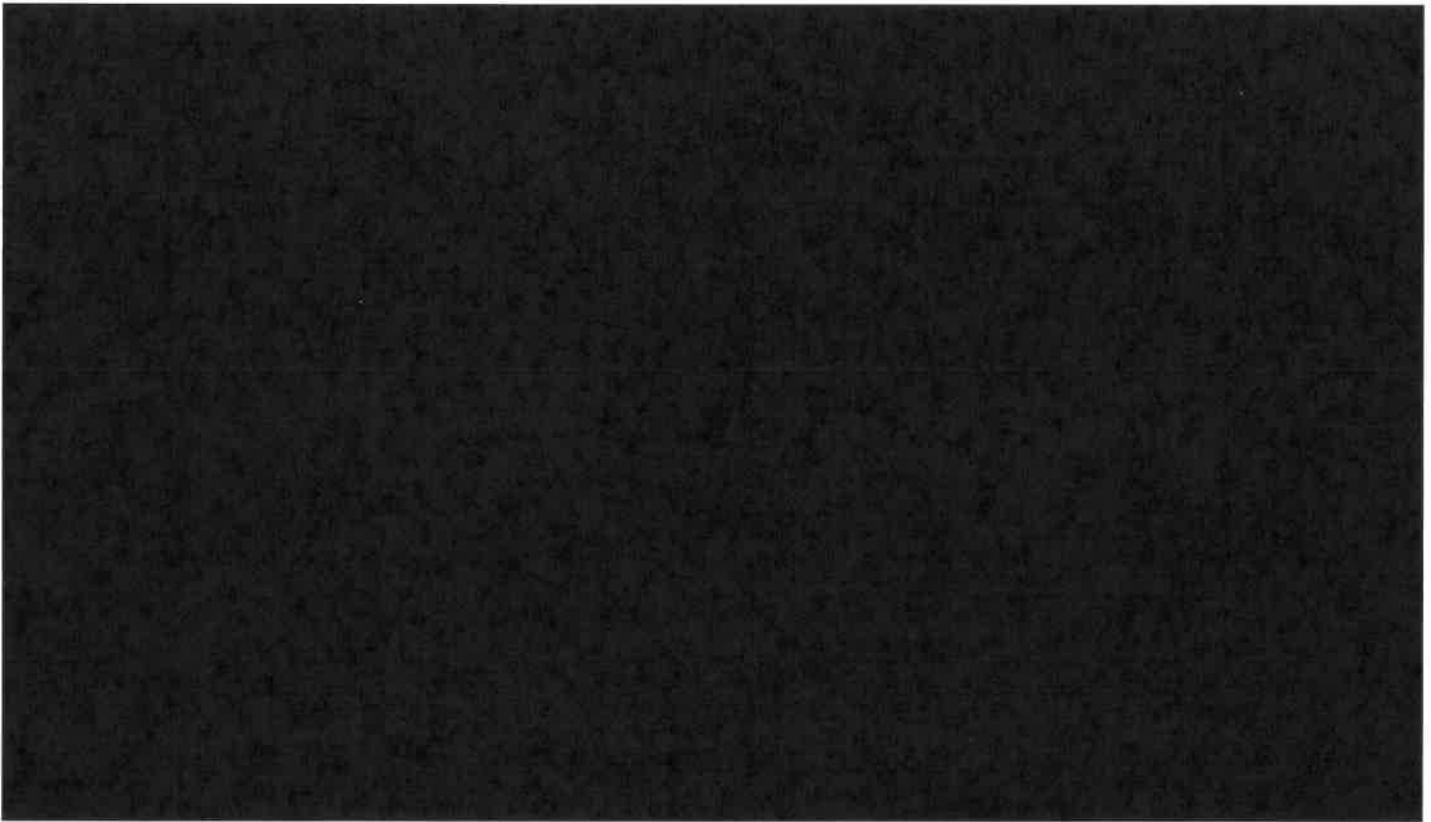
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Exhibit 6

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Exhibit 7

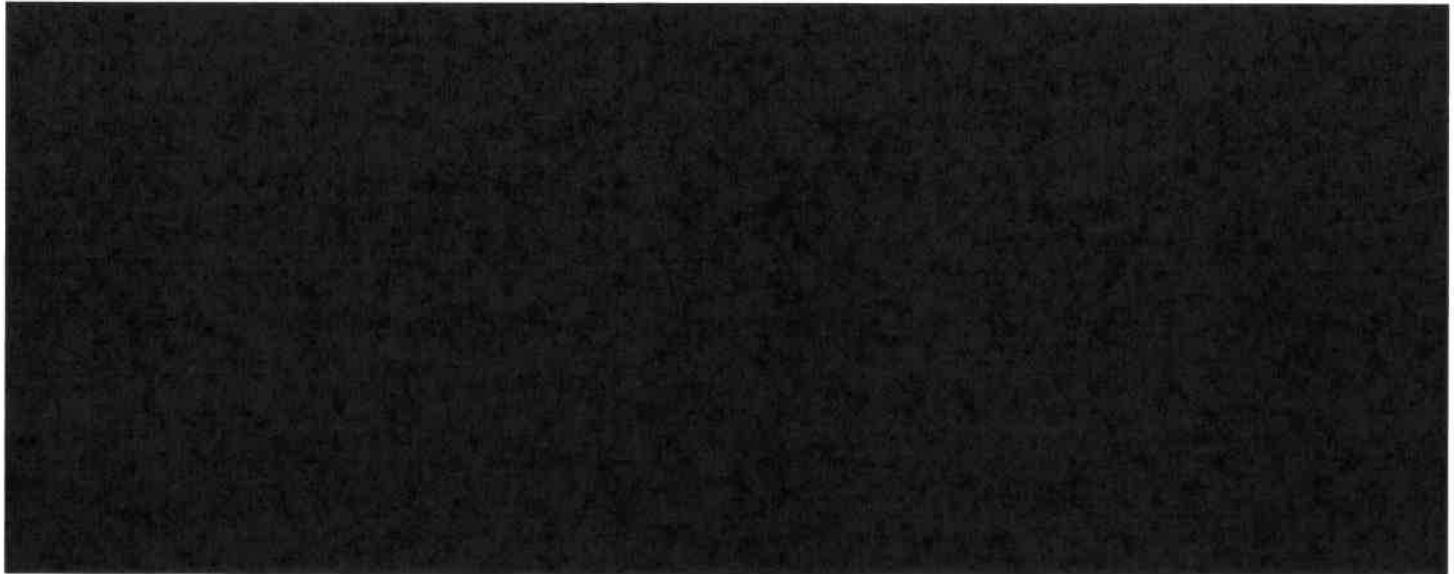
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Exhibit 8

PUBLIC VERSION

Exhibit 9

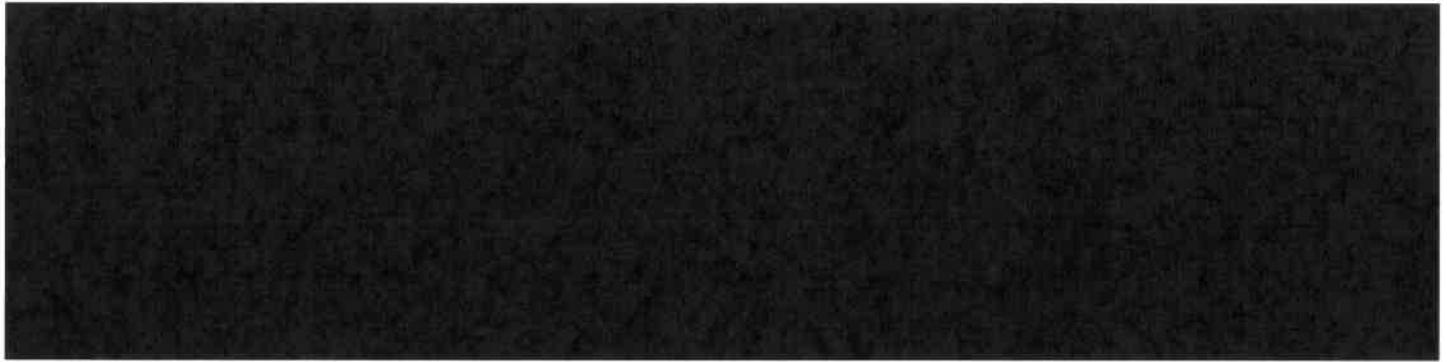
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Exhibit 10

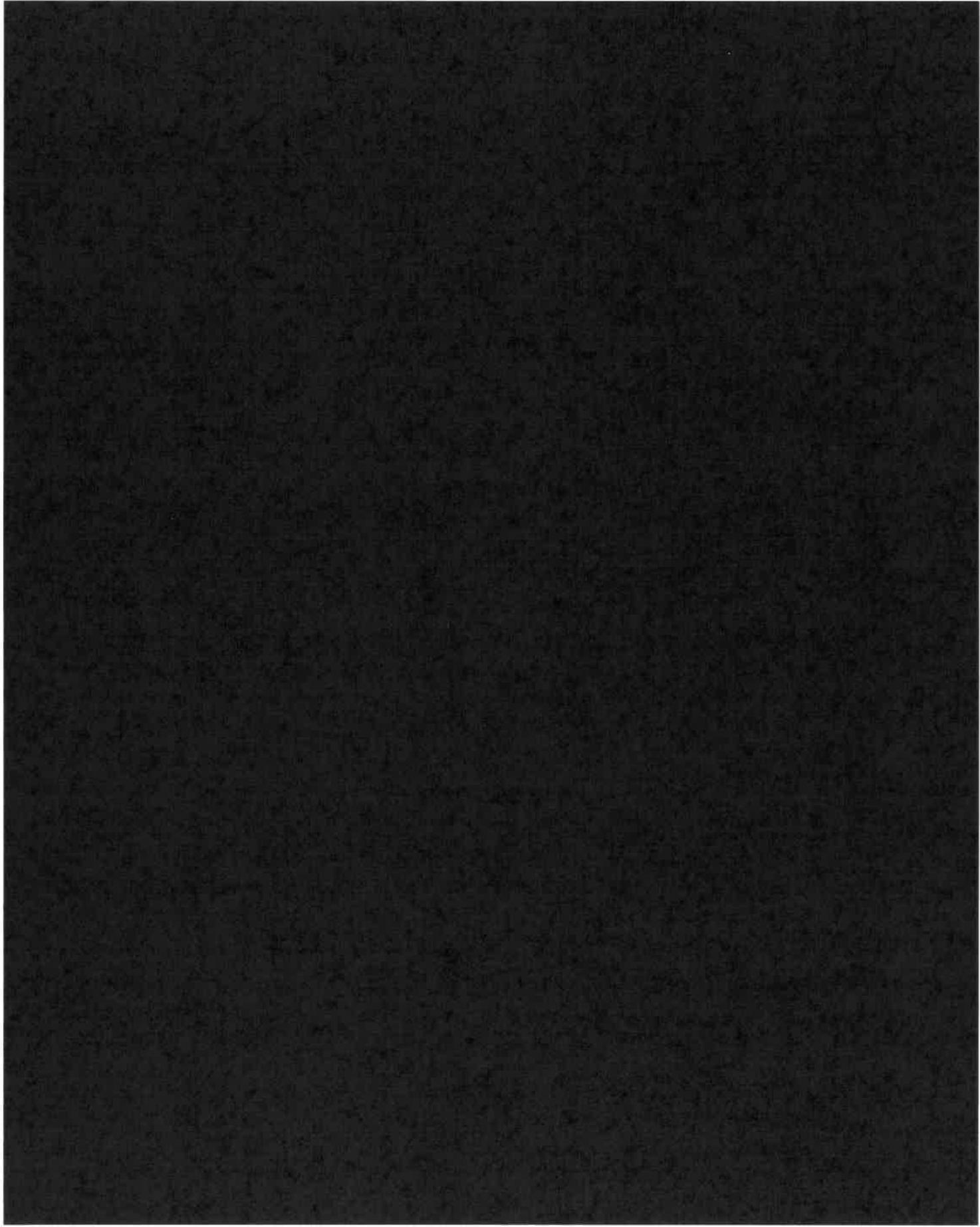
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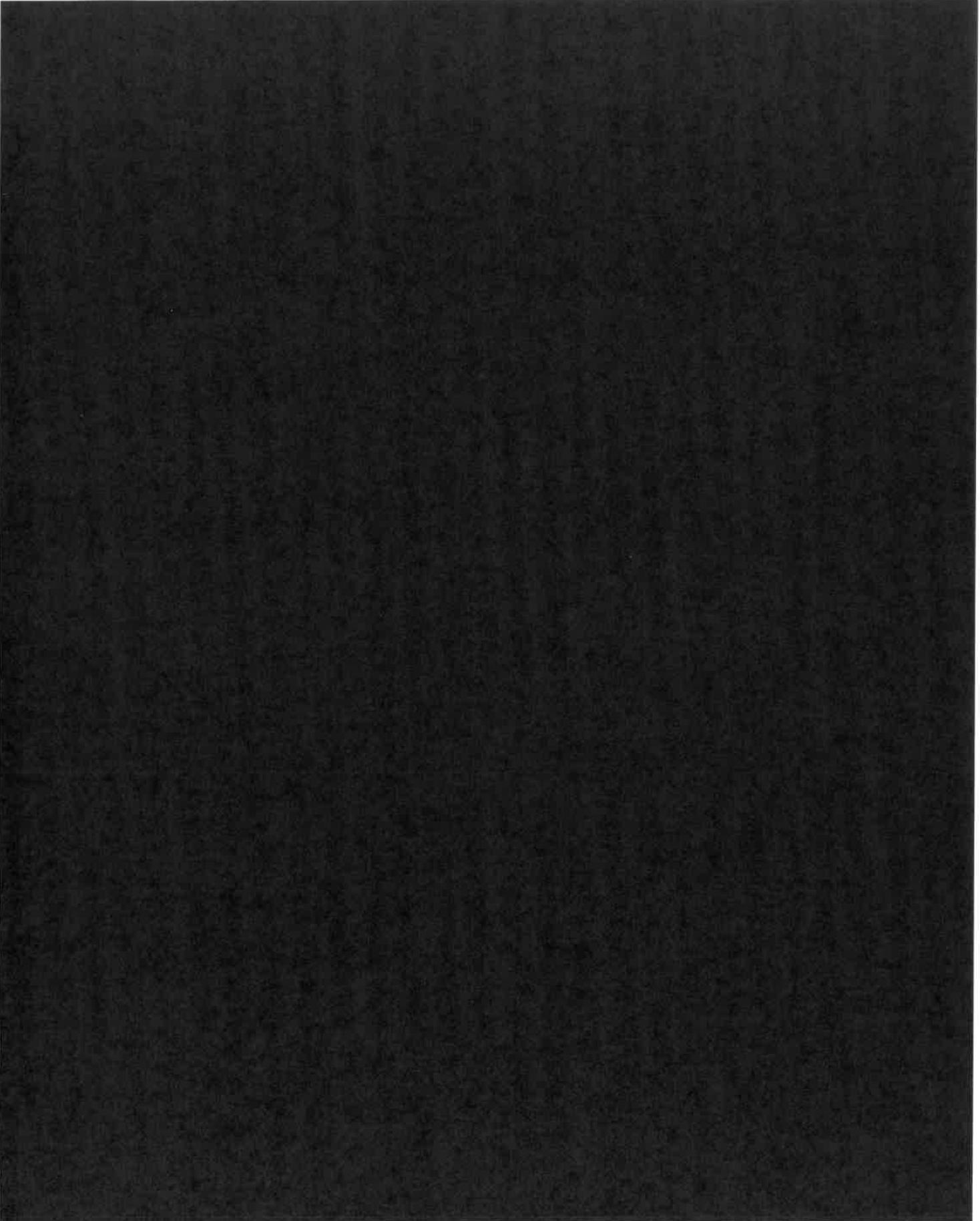
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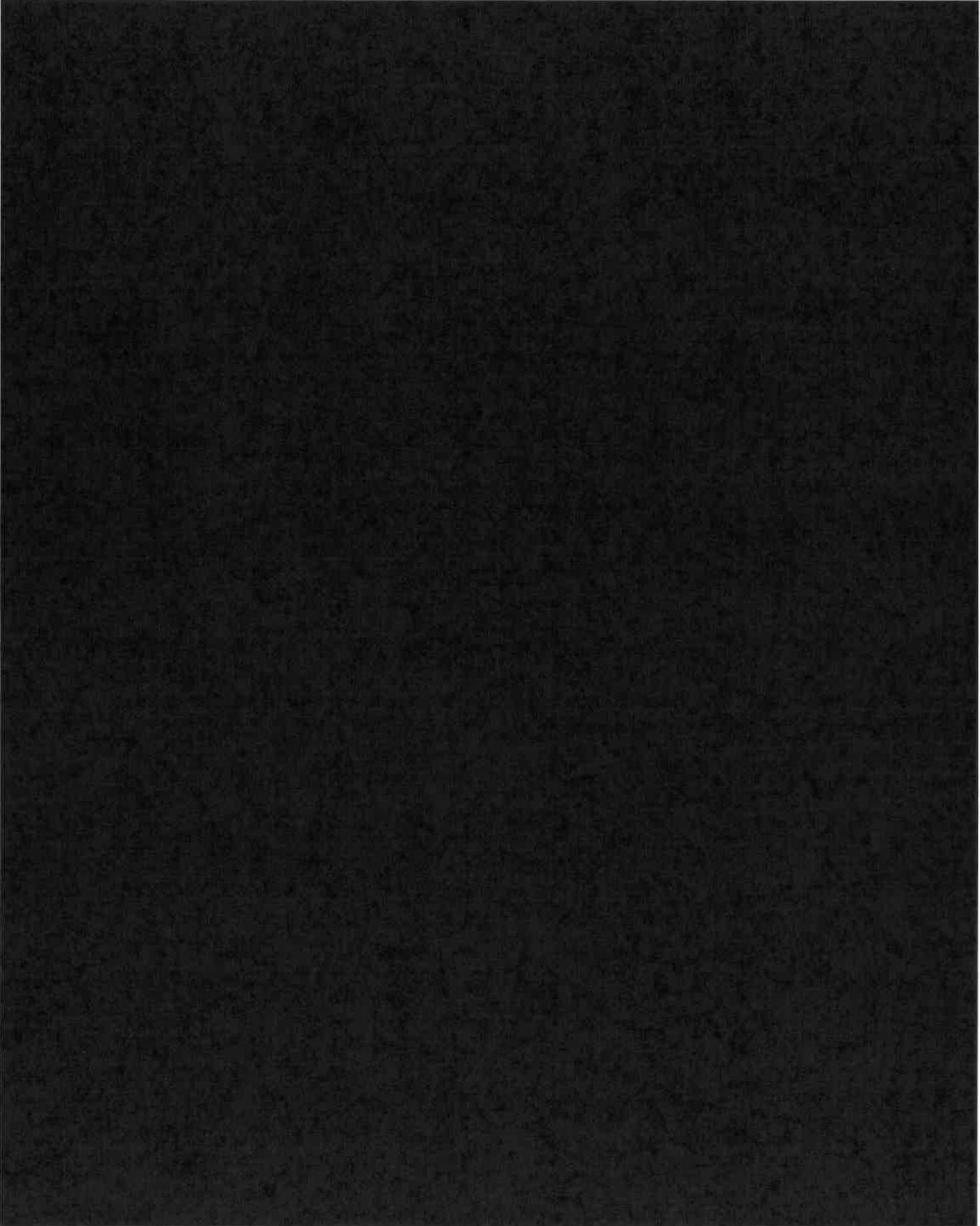
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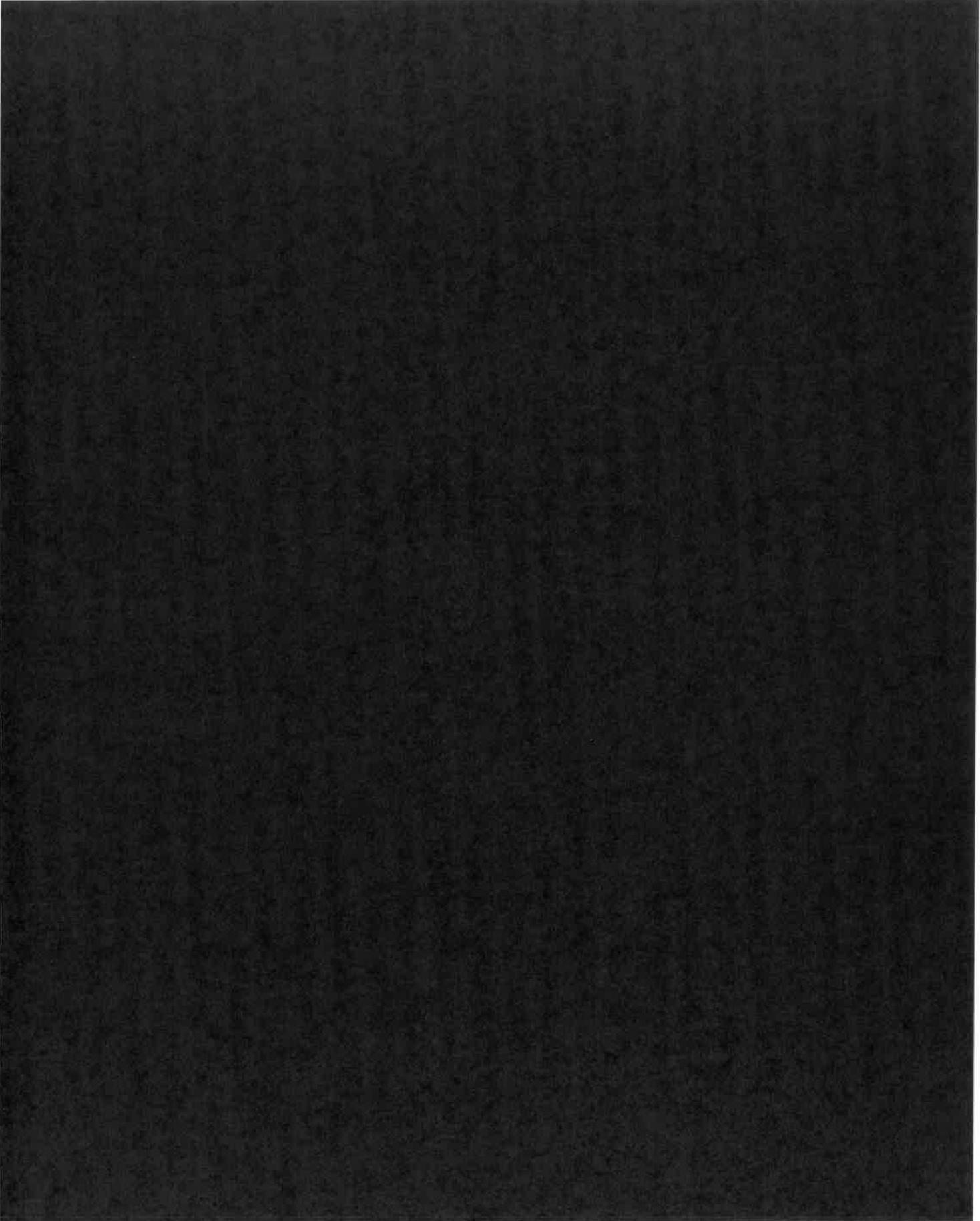
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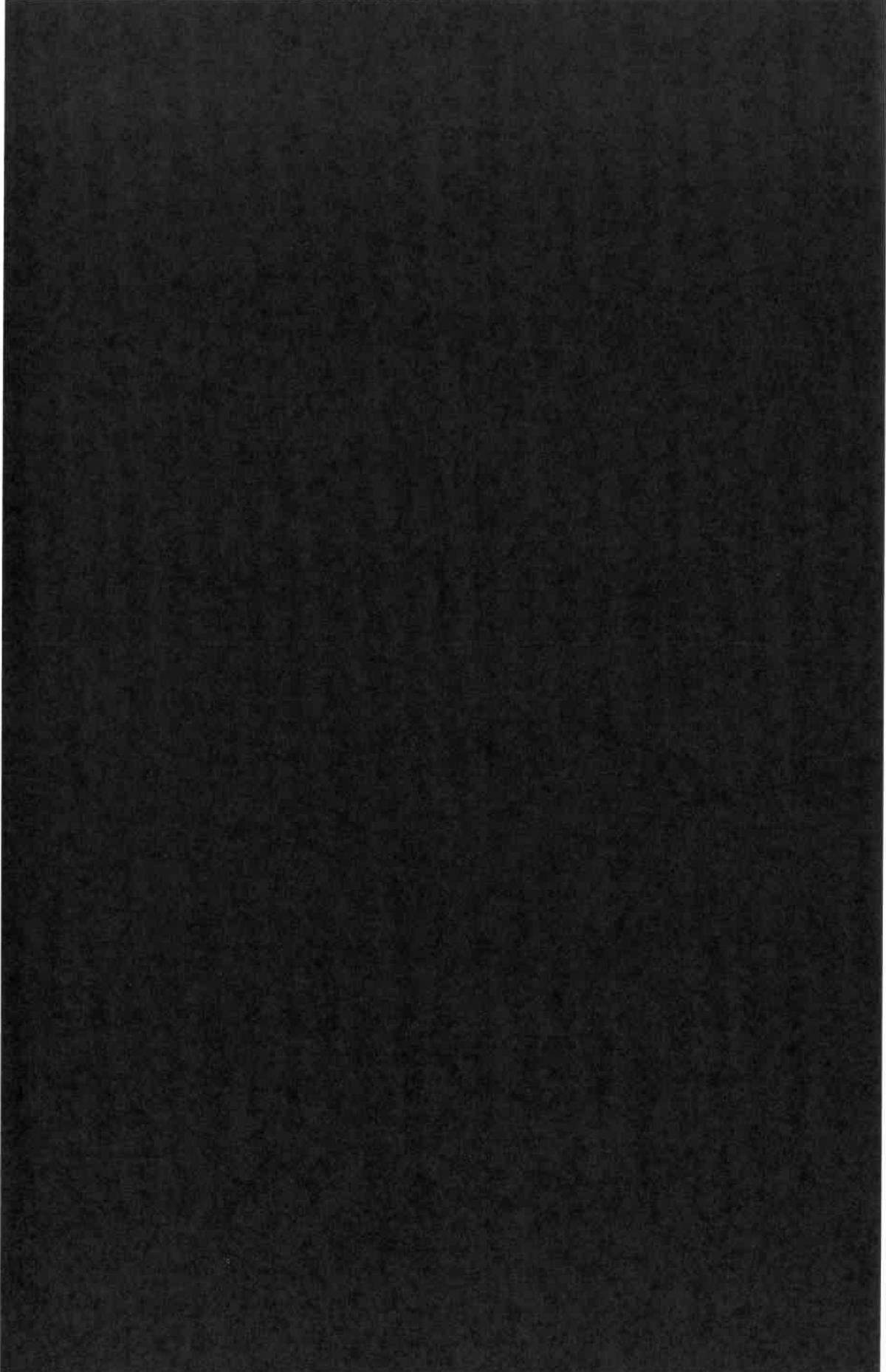
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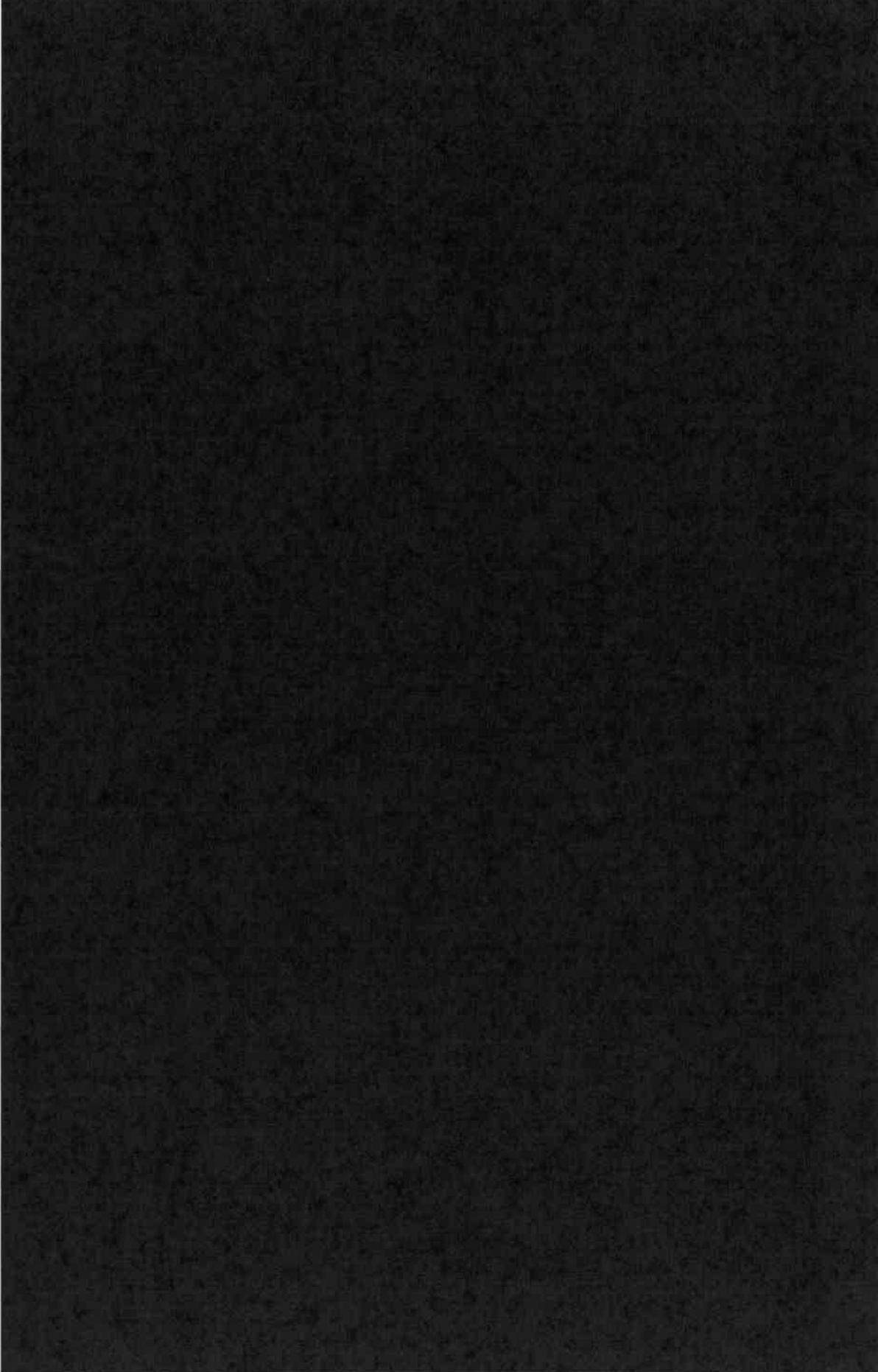
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Exhibit 12

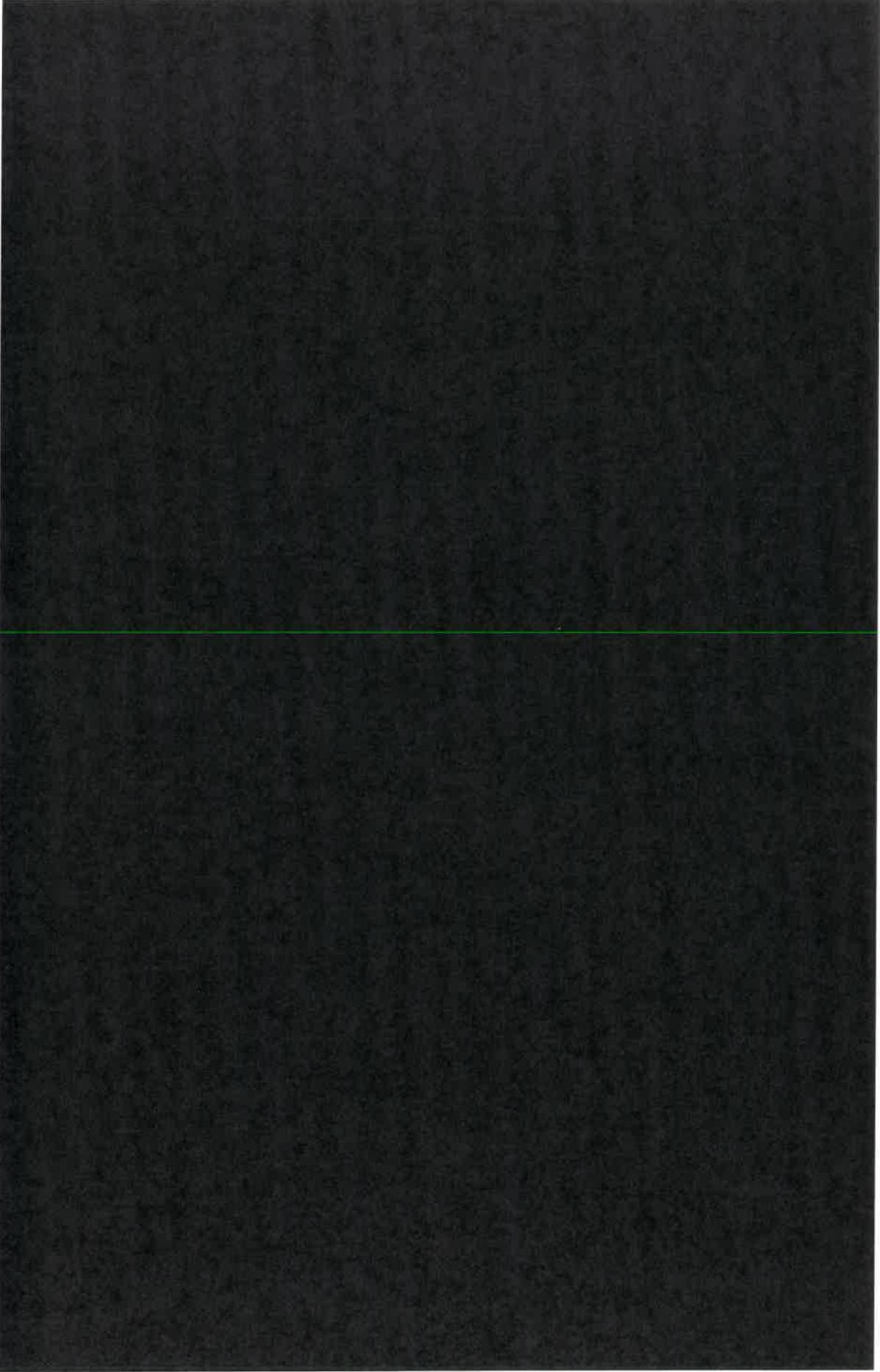
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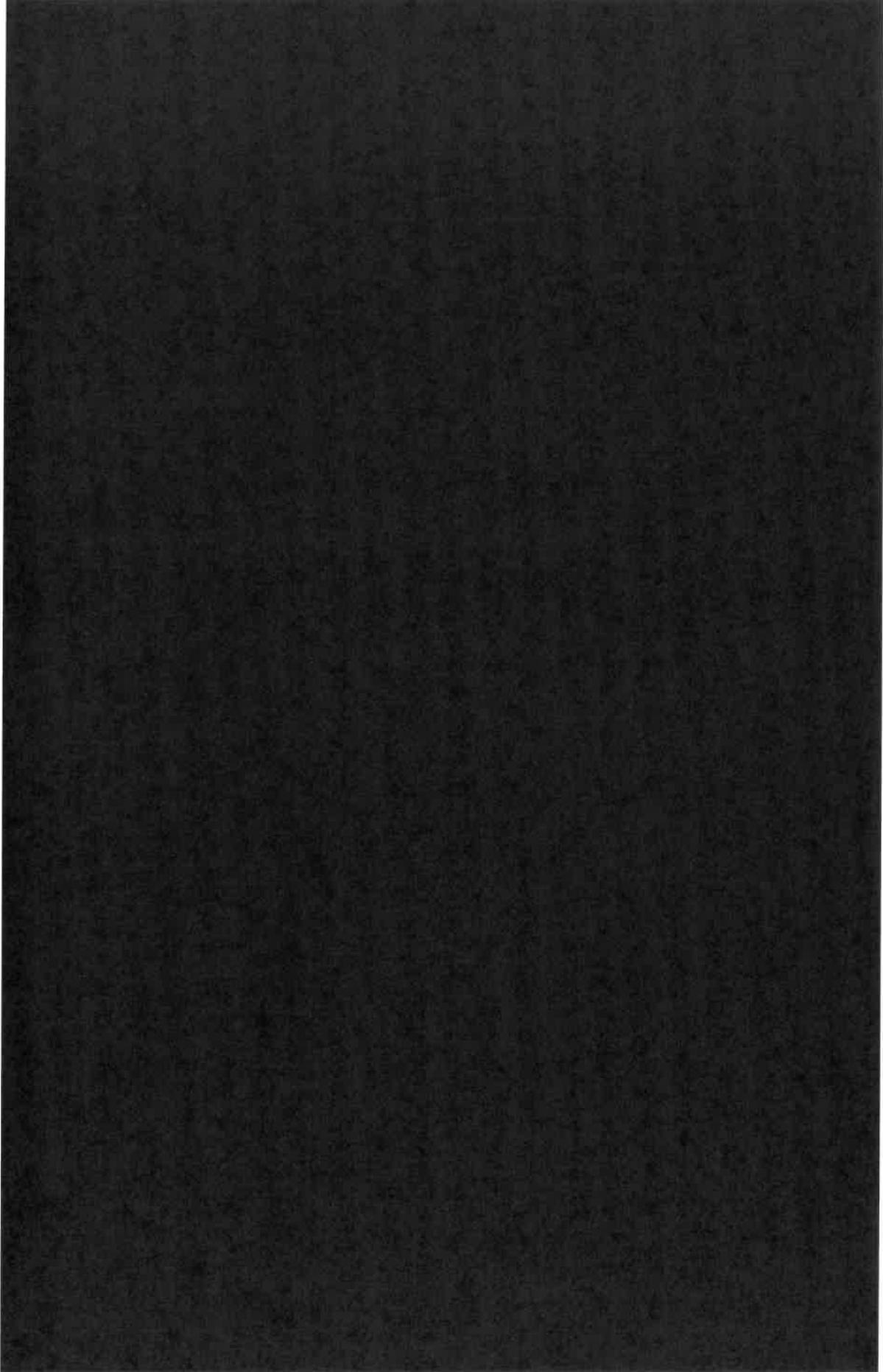
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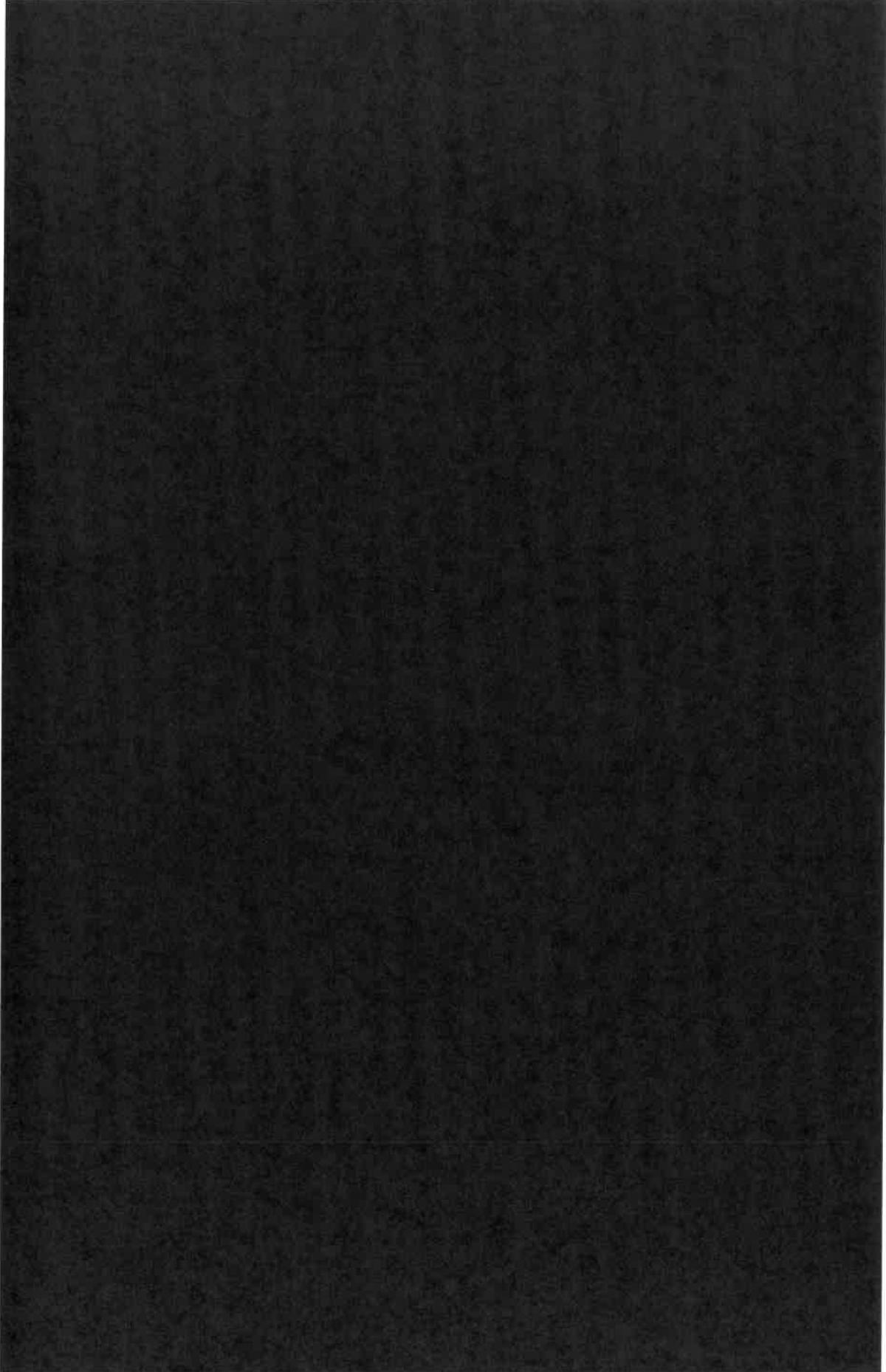
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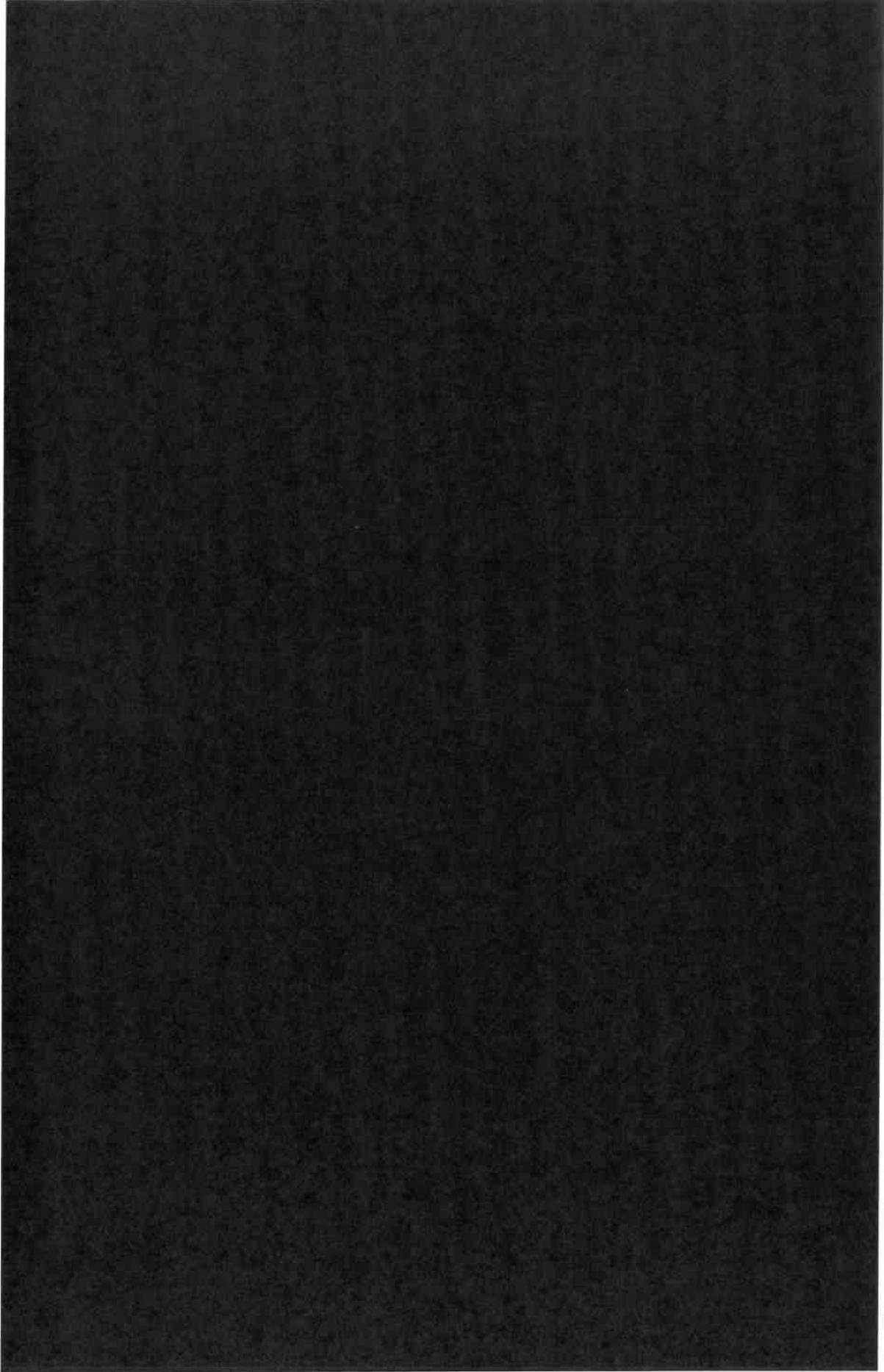
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Exhibit 13

THIS FILING IS

Item 1: An Initial (Original)
Submission

OR Resubmission No. _____

PUBLIC VERSION

Form 1 Approved
OMB No.1902-0021
(Expires 11/30/2022)
Form 1-F Approved
OMB No.1902-0029
(Expires 11/30/2022)
Form 3-Q Approved
OMB No.1902-0205
(Expires 11/30/2022)



FERC FINANCIAL REPORT
FERC FORM No. 1: Annual Report of
Major Electric Utilities, Licensees
and Others and Supplemental
Form 3-Q: Quarterly Financial Report

These reports are mandatory under the Federal Power Act, Sections 3, 4(a), 304 and 309, and 18 CFR 141.1 and 141.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of confidential nature

Exact Legal Name of Respondent (Company)

Duke Energy Florida, LLC

Year/Period of Report

End of 2019/Q4

Name of Respondent Duke Energy Florida, LLC	This Report Is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 04/14/2020	Year/Period of Report End of <u>2019/Q4</u>
PUBLIC VERSION SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS FOR DEPRECIATION, AMORTIZATION AND DEPLETION			
Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e), (f), and (g) report other (specify) and in column (h) common function.			
Line No.	Classification (a)	Total Company for the Current Year/Quarter Ended (b)	Electric (c)
1	Utility Plant		
2	In Service		
3	Plant in Service (Classified)	14,336,677,260	14,334,146,020
4	Property Under Capital Leases	535,773,410	535,773,410
5	Plant Purchased or Sold		
6	Completed Construction not Classified	4,781,491,145	4,781,491,145
7	Experimental Plant Unclassified		
8	Total (3 thru 7)	19,653,941,815	19,651,410,575
9	Leased to Others		
10	Held for Future Use	135,974,616	135,974,616
11	Construction Work in Progress	1,032,580,981	1,032,580,981
12	Acquisition Adjustments	20,325,436	20,325,436
13	Total Utility Plant (8 thru 12)	20,842,822,848	20,840,291,608
14	Accum Prov for Depr, Amort, & Depl	5,540,840,247	5,538,522,239
15	Net Utility Plant (13 less 14)	15,301,982,601	15,301,769,369
16	Detail of Accum Prov for Depr, Amort & Depl		
17	In Service:		
18	Depreciation	5,319,938,251	5,319,938,251
19	Amort & Depl of Producing Nat Gas Land/Land Right		
20	Amort of Underground Storage Land/Land Rights		
21	Amort of Other Utility Plant	216,291,395	213,973,387
22	Total In Service (18 thru 21)	5,536,229,646	5,533,911,638
23	Leased to Others		
24	Depreciation		
25	Amortization and Depletion		
26	Total Leased to Others (24 & 25)		
27	Held for Future Use		
28	Depreciation		
29	Amortization		
30	Total Held for Future Use (28 & 29)		
31	Abandonment of Leases (Natural Gas)		
32	Amort of Plant Acquisition Adj	4,610,601	4,610,601
33	Total Accum Prov (equals 14) (22,26,30,31,32)	5,540,840,247	5,538,522,239

Exhibit 14

PUBLIC VERSION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 120001-EI

In re: Energy conservation cost recovery clause.

DOCKET NO. 120002-EG

In re: Environmental cost recovery clause.

DOCKET NO. 120007-EI
ORDER NO. PSC-12-0425-PAA-EU
ISSUED: August 16, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING STIPULATION AND SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

The cost recovery dockets, Energy Conservation Cost Recovery (ECCR), Fuel and Purchased Power Cost Recovery Clause (Fuel Clause), and the Environmental Cost Recovery Clause (ECRC) are continuing dockets in which we address issues pertaining to Florida's Investor-Owned electric Utilities (IOU). These IOUs are Florida Power & Light Company, Progress Energy Florida, Inc., Gulf Power Company, Florida Public Utility Company and Tampa Electric Company. Intervenors for all three cost recovery clause dockets include the Office of Public Counsel, Federal Executive Agencies, Florida Industrial Power Users Group, Florida

DOCUMENT NUMBER-DATE

05630 AUG 16 2012

FPSC-COMMISSION CLERK

Retail Federation, and White Springs Agricultural Chemicals, Inc. In addition, the Southern Alliance for Clean Energy (SACE) and Florida Solar Energy Industry Association (FLASEIA) intervened in the ECCR clause dockets. We have jurisdiction pursuant to Chapter 120 and several provisions of Chapter 366, including Sections 366.04 - 366.06 and 366.80 - 366.85, Florida Statutes (F.S.).

Analysis

This Commission, when appropriate, allows recovery of a return on capital investments through the Fuel and Purchased Power Cost Recovery Clause, the Conservation Cost Recovery Clause, and the Environmental Cost Recovery Clause. Traditionally, we have relied on the jurisdictional capital structure and cost rates for each component of the capital structure approved in each IOU's most recent base rate case to determine the appropriate weighted average cost of capital. In certain instances, significant differences have developed between an IOU's weighted average cost of capital authorized in the last base rate case and their current weighted average cost of capital. For example, in a recent cost recovery clause docket, the difference between the current cost of capital as reported in the Earnings Surveillance Report and the cost of capital from the last rate case has been over 100 basis points. A methodology that more closely aligns current costs with current cost recovery was developed and is set out in a Settlement and Stipulation Agreement¹ (Agreement) (Attachment A).

The new methodology applies to clause cycling expenses beginning January 1, 2013. A timeline example of the methodology is provided in Attachment A. In addition to the methodology, the Agreement includes the following elements of note:

- Progress Energy will be allowed to exclude its Clean Air Interstate Rule investments from the application of the new method in 2013 and will be allowed to continue use of the current method on those investments in setting clause rates for 2013.
- No Party will challenge the justness or reasonableness of the new methodology or the appropriateness of the weighted average cost of capital reflected in the May Earnings Surveillance Reports used thereunder in any Clause proceedings. Any Party may challenge a mathematical error that it contends has been made in calculating the weighted average cost of capital in an Earnings Surveillance Report.
- The provisions are contingent on approval of the Agreement in its entirety by this Commission. The Parties agree to support the Agreement and will not request or support any order, relief, outcome or result in conflict with the terms of the Agreement in any administrative or judicial proceeding relating to, reviewing or challenging the establishment, approval, adoption or implementation of the Agreement.

¹ July 17, 2012, the parties filed the Settlement and Stipulation Agreement in Docket Nos. 120001-EI, 120002-EG, and 120007-EI. The signatories are the five electric IOUs, the Office of Public Counsel, Federal Executive Agencies, Florida Industrial Power Users Group, and White Springs Agricultural Chemicals, Inc.

PUBLIC VERSION

ORDER NO. PSC-12-0425-PAA-EU

DOCKET NOS. 120001-EI, 120002-EG, 120007-EI

PAGE 3

- If we reject or modify the Agreement in whole or in part, it is void unless ratified by the Parties, and that each Party may pursue its interests as those interests exist, and no Party will be bound by or make reference before us, any court, any other administrative forum or arbitration panel.
- The Parties asked that we take the following actions:
 - Restate and affirm our conclusion in Order No. PSC-94-0044-FOF-EI that "potentially controversial and time consuming evidentiary debates regarding the appropriate capital structure and return on equity should be the subject of proceedings [other than the clause proceedings]."²
 - Confirm the appropriateness of the weighted average cost of capital calculation methodology set forth in the Agreement for application to the calculation of projected Clause factors, actual/estimated true-ups of Clause factors and final true-ups of Clause factors in all subsequent dockets unless and until modified by us.

Decision

Evidentiary debates regarding the appropriate capital structure and the return on equity shall be the subject of proceedings other than the clause proceedings. Therefore, unless and until modified by us, we hereby approve use of the weighted average cost of capital calculation methodology as established in the Agreement in all subsequent clause dockets. Further, the Agreement filed by the parties is in the public interest because the methodology more accurately aligns current costs with cost recovery and sends a more precise price signal. Therefore, we find it appropriate to approve the Stipulation and Settlement Agreement of the parties, addressing the methodology for calculating the allowable return on clause-approved investments.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation and Settlement Agreement is hereby approved for Docket Nos. 120001-EI, 120002-EG, 120007-EI. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

² Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes, by Gulf Power Company.

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ORDERED that Docket Nos. 120001-EI, 120002-EG, 120007-EI shall remain open to address the evidentiary issues presented in each.

By ORDER of the Florida Public Service Commission this 16th day of August, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This

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petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 6, 2012.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in these dockets before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost)	
Recovery Clause with Generating)	DOCKET NO. 120001-EI
Performance Incentive Factor.)	
-----)	
In re: Energy Conservation Cost)	DOCKET NO. 120002-EG
Recovery Clause.)	
-----)	
In re: Environmental Cost)	DOCKET NO. 120007-EI
Recovery Clause.)	
-----)	
	FILED: July 17, 2012 .

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Agreement") is entered into by and between Progress Energy Florida, Inc. ("PEF"), Tampa Electric Company ("TECO"), Gulf Power Company ("Gulf"), Florida Power & Light Company ("FPL"), Florida Public Utilities Company ("FPUC"), Florida Industrial Power Users Group ("FIPUG") and Office of Public Counsel ("OPC"), collectively the "Parties" this 17th day of July, 2012.

WITNESSETH:

WHEREAS, investor-owned electric utilities ("IOUs") regulated by the Florida Public Service Commission (the "Commission") from time to time are authorized by the Commission to recover a return on capital investments through the fuel and purchased power cost recovery clause, the conservation cost recovery clause and the environmental cost recovery clause (the "Clauses") in dockets established annually for the purpose of administering and approving matters related to the Clauses; and

REC'D - FLORIDA PSC - FILED

04770 JUL 17 2012

FPPC-COMMISSION CLERK

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WHEREAS, the Commission traditionally has authorized for such purpose a return based on the jurisdictional capital structures and cost rates for each component of the capital structure approved in each IOU's most recent base rate case order; and

WHEREAS, the Commission Staff has expressed concern that as time passes subsequent to an IOU's most recent base rate order the IOU's actual jurisdictional capital structure and cost rates for components in that capital structure become different from those that were approved in the IOU's most recent base rate proceeding; and

WHEREAS, the Parties have differing views on whether any modification of the traditional methodology for calculating the return on Clause-approved investments is needed; and

WHEREAS, notwithstanding these differences in views, in order to resolve their differences and achieve a mutually acceptable settlement, the Parties stipulate and agree to utilize a new methodology for calculating the allowable return on Clause approved investments, subject to the Commission's approval of that methodology; and

WHEREAS, the Parties recognize and acknowledge that section 120.80(13)(a) of the Florida Statutes exempts Commission statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to Chapter 366 of the Florida Statutes, relating to the IOUs, from the rulemaking provisions of section 120.54(1)(a) of the Florida Statutes.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the undersigned parties hereby stipulate and agree as follows:

1. Upon final Commission approval of this Agreement, the IOUs will utilize the following methodology for calculating the allowable return on Clause-approved investments:

- (a) The calculation of the allowable return on Clause-approved investments for the 2012 Actual/Estimated and Final True-up will remain under the current methodology (*i.e.*, the rate of return is based on the jurisdictional capital structures and cost rates for each component of the capital structure that were approved in an IOU's most recent order authorizing base rates issued prior to the effective date of this Agreement).
- (b) Beginning with the 2013 cycle of Clause-recoverable expenses, all IOUs will use the following methodology:
- (i) For the Projection Filing, use the May Earnings Surveillance Report ("ESR") Weighted Average Cost of Capital ("WACC") for the calendar year in which the filing is made (e.g., for the 2013 Projection which is made in August/September of 2012, the May 2012 ESR would be used; for the 2014 Projection which is made in August/September of 2013, the May 2013 ESR would be used, and so on).
- (ii) For the Actual/Estimated True-up Filing, use the May ESR WACC from the prior calendar year for January – June of the year being trued-up, and the current calendar year May ESR WACC for July – December of the year being trued-up (e.g., for the 2013 Actual/Estimated True-up Filing which is made in August/September 2013, the May 2012 ESR would be used for January – June and the May 2013 ESR would be used for July – December; for the 2014 Actual/Estimated filing which is made in August/September 2014, the May 2013 ESR would be used for January – June and the May 2014 ESR would be used for July – December; and so on). The monthly accounting on the books and records of the utility would be performed consistent with this methodology.

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(iii) For the Final True-up Filing regarding a particular calendar year use the same WACCs that were used for the Actual/Estimated True-up Filing regarding that same particular calendar year.

(c) The term WACC as used above is meant to reflect the capital structure ratios and associated cost rates when calculating the revenue requirement rate of return. The proportions of the various components of the capital structure (including common equity) and cost rate information for all components of the capital structure other than ROE contained on Schedule 4 (Midpoint Average Rate of Return -- EPSC Adjusted Basis) of the relevant ESR as described above shall be utilized to arrive at the relevant WACC.¹ The equity components shall also be grossed up for the statutory income tax rate. The cost rates for the components of the capital structure other than common equity shall be the actual cost rates shown in the ESR. The cost rate for common equity will be the last authorized rate of return on equity ("ROE"). In the past there have been instances where the Commission authorized a specific ROE for projects being recovered through a clause. To the extent the Commission issues an order authorizing an ROE different from the midpoint on Schedule 4 of the relevant ESR for a particular clause or project within a clause, that ROE will be used to calculate the relevant WACC.

(d) Exceptions to Section (1)(b) above,

(i) In the event that a base rate decision² is rendered by the Commission subsequent to the period captured by the relevant May ESR to be used in Section

¹ In calculating the WACC for a Clause-approved investment, the proportion of ITC in the capital structure shall reflect the amount of ITC approved by the Commission for financing that investment. (Reference Commission Order PSC-10-0153-FOI-EI, page 106).

² The parties agree that the term "base rate decision" encompasses any decision by the Commission that determines or approves by settlement or through a litigated case the ROE and/or capital structure that will be used for setting and evaluating an IOU's base rates.

(i)(b), then the Commission's decision on the cost of capital and capital structure as reflected in the order implementing the base rate decision (the "Order") will supersede the actuals used in the May ESR from the effective date of the Order, until the next actual May ESR after the effective date of the Order.

(ii) PEF will be allowed to exclude its CAIR investments from the application of the new method in 2013 and will be allowed to continue use of the current method on those investments in setting clause rates for 2013. This is consistent with the intent of the Settlement and Stipulation which transfers those investments to base rates effective with the first billing cycle for 2014.

The new methodology set forth above is illustrated on Attachment A hereto.

2. The Parties recognize that an IOU's current actual overall cost of capital at any given point in time may be higher or lower than the overall rate of return approved by the Commission in the IOU's most recent base rate proceeding. It is the intent of the Parties that the new methodology prescribed herein for more closely tracking and utilizing the IOU's current actual overall cost of capital in calculating the allowed return on Clause-approved investments is appropriate for use without regard to whether the resulting return is higher or lower than that approved in the IOU's most recent base rate proceeding. Accordingly, no Party will challenge the justness or reasonableness of the new methodology or the appropriateness of the WACC reflected in the May ESRs used thereunder in any Clause proceedings; provided, however, that any Party may challenge a mathematical error that it contends has been made in calculating the WACC in an ESR. It is contemplated that a party who believes that the WACC presentation in the ESR is inconsistent with the most recent base rate proceeding may provide the basis for this

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belief to Commission Staff for evaluation in the Staff's role in monitoring the IOU's ESR compliance.

3. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing or challenging the establishment, approval, adoption or implementation of this Agreement or the subject matter hereof.

4. The Parties shall support the approval of this Agreement by the Commission at the earliest possible time in order to facilitate the implementation of the new methodology for calculating the allowable return on Clause investments, starting with projections of Clause factors for 2013 that are scheduled to be filed in the above-referenced dockets in August and September 2012. To accomplish this end while also clearly stating the Commission's continuing support for using the new methodology in subsequent Clause dockets unless and until modified by the Commission, the Parties respectfully request that the Commission take the following steps:

(a) enter an order in each of the above-referenced dockets attaching and approving this Agreement for application to the 2013 projected Clause factors that will be filed by the IOUs in August and September 2012; and

(b) attach and approve this Agreement in the final order issued in each of the above-referenced dockets, with such final order (i) restating and affirming the Commission's conclusion in Order No. PSC-94-0044-POF-III that "potentially controversial and time consuming evidentiary debates regarding the appropriate capital structure and ROI should be the subject of

proceedings [other than the clause proceedings]" and (ii) confirming the appropriateness of the WACC calculation methodology set forth in this Agreement for application to the calculation of projected Clause factors, actual/estimated true-ups of Clause factors and final true-ups of Clause factors in all subsequent Clause dockets unless and until modified by the Commission.

5. This agreement shall survive the closure of Docket Nos. 120001-EI, 120002-EG and 120007-EI, shall apply in future annual dockets established for the Clauses and shall remain in effect until the Commission modifies or rescinds the order approving this Agreement, whether on its own motion or as a result of a motion or petition by a party to this stipulation or another substantially affected person.

6. In the event the Commission rejects or modifies this Agreement in whole or in part, the Parties agree this Agreement is void unless ratified by the Parties, and that each Party may pursue its interests as those interests exist, and no Party will be bound by or make reference to this Agreement before this Commission, any court, any other administrative forum or arbitration panel.

7. This Agreement dated as of July 17, 2012 may be executed in counterpart originals, and a facsimile of the original signature shall be deemed an original.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signatures below.

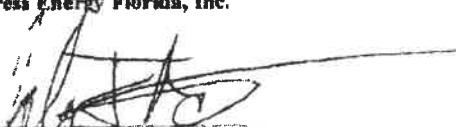
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**Florida Power Corporation dba
Progress Energy Florida, Inc.**

By 

John Burnett, Esquire
Post Office Box 14042
St. Petersburg, Florida 33733

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Tampa Electric Company

By Jan Beasley

James D. Beasley, Esquire
Jeffry Wahlen, Esquire
Post Office Box 391
Tallahassee, Florida 32302

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Gulf Power Company

By _____

Jeffrey A. Stone, Esquire
Beggs & Lane, RLLP
Post Office Box 12950
Pensacola, Florida 32591
850/432-2451
Attorneys for Gulf Power Company

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Florida Power & Light Company

By 

John Butler, Esquire
700 Universe Boulevard
Juno Beach, Florida 33408

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Florida Public Utilities Company

By



Beth Keating, Esquire
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301

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Florida Industrial Power Users Group

By *Vicki Gordon Kaufman*

Jon C. Moyle, Jr., Esquire
Vicki Gordon Kaufman, Esquire
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

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Office of Public Counsel

By 

J.R. Kelly, Esquire
Charles Rehwinkel, Esquire
111 W. Madison St., Room 812
Tallahassee, Florida 32399

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Attachment A
WACC Stipulation & Settlement Agreement
Docket Nos. 120001, 120002 & 120007
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Table 1:

Type of Filing	Clause Cycle Expense	Date of Filing	WACC Method
Final True-up	Jan-11 through Dec-11	Apr/May - 12	LAST AUTHORIZED
Act/Est True-up	Jan-12 through Dec-12	Aug/Sept - 12	LAST AUTHORIZED
Projection	Jan-13 through Dec-13	Aug/Sept - 12	May - 12 ESR
Final True-up	Jan-12 through Dec-12	Apr/May - 13	LAST AUTHORIZED
Act/Est True-up	Jan-13 through Dec-13	Aug/Sept - 13	May-12 ESR (Jan - Jun) / May - 13 ESR (Jul - Dec)
Projection	Jan-14 through Dec-14	Aug/Sept - 13	May - 13 ESR
Final True-up	Jan-13 through Dec-13	Apr/May - 14	May - 12 ESR (Jan - Jun) / May - 13 ESR (Jul - Dec)
Act/Est True-up	Jan-14 through Dec-14	Aug/Sept - 14	May-13 ESR (Jan - Jun) / May - 14 ESR (Jul - Dec)
Projection	Jan-15 through Dec-15	Aug/Sept - 14	May - 14 ESR

Table 2:

IN YEAR OF RATE CASE DECISION	Rate Case Effective											
	Jan-13	Feb 13	Mar 13	Apr 13	May 13	Jun-13	Jul-13	Aug 13	Sep 13	Oct 13	Nov 13	Dec 13
Projection	ESR	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12
Act/Est	ESR	May-12	May-12	May-12	May-12	May-12	May-12	May-13	May-13	May-13	May-13	May-13
Final	ESR	RESULTS SAME AS ACT/EST										
IN YEAR OF RATE CASE DECISION	Rate Case Effective											
	Jan-13	Feb 13	Mar 13	Apr 13	May 13	Jun-13	Jul-13	Aug 13	Sep 13	Oct 13	Nov-13	Dec-13
Projection	ESR	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12	May-12
Act/Est	ESR	RATE CASE ORDER FOR WACC										
Final	ESR	RESULTS SAME AS ACT/EST										

Note 1: assumes for illustrative purposes a January 1, 2013 effective date for the rate case order.

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Exhibit 15

PUBLIC VERSION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress Energy Florida, Inc.	DOCKET NO. 090079-EI
In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.	DOCKET NO. 090144-EI
In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.	DOCKET NO. 090145-EI ORDER NO. PSC-10-0131-FOF-EI ISSUED: March 5, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

APPEARANCES:

R. ALEXANDER GLENN, JOHN T. BURNETT, ESQUIRES, Progress Energy Service Company, LLC, P.O. Box 14042, St. Petersburg, Florida 33733-4042; JAMES MICHAEL WALLS, DIANNE M. TRIPPLETT, and MATTHEW BERNIER, ESQUIRES, Carlton Fields, P.A., Post Office Box 3239, Tampa, Florida 33601-3239; RICHARD D. MELSON, ESQUIRE, 705 Piedmont Drive, Tallahassee, Florida 32312
On behalf of Progress Energy Florida, Inc. (PEF).

CHARLES REHWINKEL, Associate Public Counsel, CHARLIE BECK, Deputy Public Counsel, and PATRICIA A. CHRISTENSEN, Associate Public Counsel, ESQUIRES, Office of the Public Counsel, c/o the Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

STEPHANIE ALEXANDER, ESQUIRE, 200 West 200 West College Avenue, Suite 216, Tallahassee, Florida 32301
On behalf of the Florida Association for Fairness in Rate Making (AFFIRM).

1530 MAR-5-2
PPS-3
1530 MAR-5-2
PPS-3

CECILIA BRADLEY, Office of the Attorney General, The Capitol – PL01,
Tallahassee, FL 32399
On behalf of the Office of the Attorney General (AG).

JON MOYLE, JR, and VICKI GORDON KAUFMAN, ESQUIRES, 118 North
Gadsden Street, Tallahassee, Florida 32312 and JOHN W. McWHIRTER, JR.,
ESQUIRE, P.O. Box 3350, Tampa, Florida
On behalf of the Florida Industrial Power Users Group (FIPUG).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Young
van Assenderp, P.A., 225 South Adams Street, Suite 200, Tallahassee, Florida
32301
On behalf of the Florida Retail Federation (FRF).

AUDREY VAN DYKE and ELLEN EVANS, Naval Facilities Engineering
Command, Litigation Headquarters, 720 Kennon Street, S.E. Building 36, Room
136, Washington Navy Yard, DC 20374
On behalf of the Navy (NAVY).

JAMES W. BREW and F. ALVIN TAYLOR, ESQUIRES, Brickfield, Burchette,
Ritts and Stone, P.C., 1025 Thomas Jefferson St., N.W., Eighth Floor, West
Tower, Washington, D.C. 20007
On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate –
White Springs (PCS PHOSPHATE or PCS).

KATHERINE E. FLEMING, CAROLINE M. KLANCKE, KEINO YOUNG, and
ERIK L. SAYLER, ESQUIRES, Florida Public Service Commission, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (STAFF).

FINAL ORDER DENYING RATE INCREASE

BY THE COMMISSION:

BACKGROUND

This proceeding commenced on March 20, 2009, with the filing of a petition for a permanent rate increase by Progress Energy Florida, Inc. (PEF or Company). The Company is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the jurisdiction of this Commission. PEF's service area comprises approximately 20,000 square miles in 35 of Florida's counties. PEF serves more than 1.6 million retail customers.

PEF requested an increase in its retail rates and charges to generate \$499,997,000 in additional gross annual revenues. This increase would allow the Company to earn an overall rate

a regulated utility shall make adjustments to its rate base over all sources of capital as opposed to only investor sources of capital in its capital structure. In reply, witness Toomey stated that he did not know if it does specifically or not. Witness Toomey could not identify anything in the Internal Revenue Code and IRS income tax regulations that would specifically tell PEF exactly how to make the adjustments in its MFRs or reconcile its rate base.

PEF argued that a second reason to reconcile rate base over all sources of capital is that it matches the way PEF funds its rate base and manages its sources of capital. PEF explained that all sources of capital, including customer deposits, deferred taxes, and investment tax credits are pooled together to fund PEF's rate base in the normal course of its operations. PEF stated that its sources of capital cannot be traced solely to investor-supplied sources of capital and that it does not segregate its sources of capital. PEF explained that such adjustments would be appropriate only if PEF were financing the clause-related plant and CWIP that is excluded from rate base differently than it is financing the plant and CWIP included in the recoverable base rate.

PEF believes that to avoid a potential violation of IRS tax normalization rules, the rate of return for clause-related plant and AFUDC-eligible CWIP removed from the rate base should be calculated using the same methodology as the rate of return for the jurisdictional rate base so that adjustments to ADITs are applied consistently. PEF has reconciled rate base to capital structure over all sources of capital. We believe that the appropriate method to reconcile rate base to capital structure is to make adjustments to the class of capital in the capital structure that correspond to adjustments made to related accounts in rate base. For example, adjustments made to rate base from accounts that do not generate deferred taxes or investment tax credits should not be reconciled over deferred taxes or investment tax credits in the capital structure. However, we recognize that the record does not contain testimony and evidence supporting this methodology. The record shows that PEF does not segregate its sources of capital and track its funding usage. Accordingly, for the sole purpose of setting rates in this rate case only, we find that rate base and capital structure have been reconciled appropriately.

F. Capital Structure

This issue addresses the appropriate capital structure for ratemaking purposes for the projected 2010 test year. As discussed earlier, based on previous decisions we have approved adjustments to the balances of common equity, ADITs, and ITCs. In addition to these adjustments, it was noted that PEF applied a jurisdictional factor of 75.95 percent to customer deposits included in its proposed capital structure for the 2010 test year. The application of a jurisdictional factor of 75.95 percent to customer deposits is inconsistent with our prior practice. A jurisdictional factor of 100 percent for customer deposits was used in Florida Power & Light Company's 1983 rate case.³⁶ We believe it is appropriate to use 100 percent of the customer deposits in the capital structure for the purposes of setting rates in this case.

Based on the foregoing, we find that a capital structure that reflects PEF's proposed capital structure for the projected 2010 test year on MFR Schedule D-1a, page 1 of 3, with

³⁶ Order No. 13948, issued December 28, 1984, in Docket No. 830465-EI, In re: Petition of Florida Power and Light Company for an increase in rates.

specific adjustments to remove the \$711 million of imputed equity from common equity and increase the jurisdictional factor applied to customer deposits from 75.95 percent to 100 percent is appropriate. This capital structure is supported by competent and substantial evidence in the record. Accordingly, the appropriate capital structure for the purpose of setting rates in this proceeding is shown on Schedule 2, attached hereto.

G. Cost Rate for Short-term Debt

PEF proposed a cost rate of 5.25 for short-term debt for the projected 2010 test year. This rate is comprised of an assumed commercial paper (CP) borrowing rate of 4.50 percent, plus fees associated with its credit facility of 0.75 percent. PEF based its 4.50 percent CP interest rate assumption on an estimated yield spread over the projected three-month London Interbank Offered Rate (LIBOR) rate.

PEF's projected three-month LIBOR rates for 2009 and 2010 are based on an implied three-month LIBOR forward curve from Bloomberg dated November 24, 2008. The three-month LIBOR rates PEF used for 2010 from the Bloomberg forward curve are as follows:

Q1 2010 = 1.65%
Q2 2010 = 1.35%
Q3 2010 = 1.10%
Q4 2010 = 2.90%

The average of the four three-month LIBOR rates for 2010 is 1.75 percent. The three-month LIBOR rates PEF used for 2009 from the Bloomberg forward curve are as follows:

Q1 2009 = 2.98%
Q2 2009 = 2.75%
Q3 2009 = 2.95%
Q4 2009 = 1.94%

The average of the four, three-month LIBOR rates for 2009 is 2.66 percent. We agree with witness Woolridge that 2.66 percent is significantly above the three-month LIBOR rates that have existed in 2009. We concur that the average three-month LIBOR rate for 2009 is approximately 1.00 percent. The three-month LIBOR rate was at 0.30 percent at the time of witness Woolridge's cross examination on September 29, 2009. We believe the record indicates the data PEF provided for the implied three-month LIBOR forward curves from Bloomberg for 2009 and 2010 is stale and has been shown to be overstated.

We believe that the record supports a range of 1.00 percent to 1.25 percent for an estimated three-month LIBOR rate for 2010. For ratemaking purposes, we believe a fair estimate is the median of that range or 1.12 percent.

To achieve its forecasted CP borrowing rate, PEF added an estimated yield spread over the three-month LIBOR rate for 2010. PEF indicated that spreads would range from 160 basis

points to 340 basis points. PEF provided no documents to support its assumed yield spread. We agree with witness Woolridge's methodology explained in his direct testimony to interpolate an assumed yield spread. Using the data for 2009, witness Woolridge subtracted the average three-month LIBOR rate implied from the Bloomberg LIBOR forward curve of 2.66 percent from PEF's assumed CP borrowing rate of 4.50 percent which resulted in an assumed CP yield spread of 1.845 percent. We believe this estimate is supported by PEF's CP yield spreads for the last four months of 2008. In its response to OPC's Fourth Set of Interrogatories, No. 168, PEF stated, "[o]ur commercial paper rates in the last 4 months of 2008 had spreads to three-month LIBOR ranging from -7 basis points to +333 basis points . . ." The central tendency of the range of negative 7 to 333 basis points is a median of 163 basis points. Therefore, we find an assumed CP yield spread of 184.5 basis points for 2010 is reasonable.

The third component of the cost rate for short-term debt is the fees associated with PEF's credit facility. We agree with witness Sullivan that the appropriate adjustment for credit facility fees is 0.75 percent. The record shows that PEF is obligated to pay annually 0.07 percent of the \$450 million credit facility committed to PEF by the lenders. PEF is also obligated to pay an annual administrative agency fee of \$25,000 for the credit facility. PEF also amortized the expenses associated with fees incurred to originate the credit facility in March 2005. PEF estimated that the amortization is expected to be approximately \$145,000 in 2010. The total amount of the fees is \$485,000. PEF divided the amount of the fixed fees by the projected amount of the 13-month average outstanding balance for short-term debt during the projected 2010 test year to arrive at a cost rate of 0.75 percent for the credit facility fees ($\$485,000 \div \$65,051,000 = 0.75$).

In his testimony, witness Woolridge used 0.21 percent to account for the credit facility fees in his computation for the short-term debt cost rate. He did not provide any testimony that explains how he arrived at 21 basis points for the credit facility fees.

We believe the record supports a cost rate for short-term debt of 3.72 percent for the projected 2010 test year. To arrive at the cost rate, we utilized the same methodology as PEF and OPC but used different inputs in its computation. We used an estimated three-month LIBOR rate of 1.12 percent and added an assumed CP yield spread of 1.85 percent to arrive at the projected CP borrowing rate of 2.97 percent. We added 75 basis points for the cost of credit facility fees to the CP borrowing rate of 2.97 percent for a total cost rate for short-term debt of 3.72 percent. Accordingly, we find that the appropriate cost rate for short-term debt for the projected 2010 test year is 3.72 percent.

H. Cost Rate for Long-term Debt

PEF asserted that its projected cost rate for long-term debt of 6.42 percent reflects expected future interest rates for a mix of ten-year and thirty-year bonds. PEF argued that its projected cost rate is reasonable because interest rates are expected to increase in the future and PEF has historically issued a mix of ten-year and thirty-year bonds.

OPC proposed a cost rate for long-term debt of 6.05 percent. OPC witness Woolridge asserted that PEF's cost rate for long-term debt includes a projected ten-year bond issue on March 1, 2010 at a coupon rate of 6.98 percent. OPC Witness Woolridge testified that the current yields on ten-year, A and BBB+ rated utility bonds are 5.19 percent and 5.60 percent, respectively. He argued that PEF's projected bond yield of 6.98 percent is not reflective of current market interest rates. In his testimony, witness Woolridge stated that he used PEF's 2009 projected long-term debt cost rate of 6.05 percent in his cost of capital for PEF.

PEF Witness Sullivan disagreed with witness Woolridge's recommended cost rate for long-term debt of 6.05 percent. Witness Sullivan argued that witness Woolridge chose to use the overall embedded long-term debt cost rate for 2009 as the long-term debt cost rate for 2010. Witness Sullivan asserted that PEF currently has a \$300 million first mortgage bond with an interest rate of 4.50 percent that matures on June 1, 2010. Witness Sullivan argued that in order for the 2010 long-term debt cost rate to remain at the 2009 embedded cost rate of 6.05 percent, the new \$750 million bond projected to be issued in 2010 would have to be issued at a rate of 4.30 percent. He maintained that PEF's projected yield is based on expected future market interest rates, not current interest rates. Witness Sullivan argued that the yields on ten-year and thirty-year U.S. Treasury notes/bonds are expected to increase to well over 4.00 percent and 5.00 percent, respectively, in 2010. Witness Sullivan argued that using only current ten-year bond rates as a proxy for rates in the future leads to unrealistically low new debt issuance cost assumptions for 2010.

The disagreement between the parties centers on the difference between the parties' estimated coupon rate on PEF's projected issuance of a new \$750 million ten-year bond on March 1, 2010. PEF based its estimate on forecasted ten-year and thirty-year U.S. Treasury yields and the estimated spreads above those yields. PEF used the ten-year bond in its financial forecast but based its estimated interest rate on the average coupon rate on ten-year and thirty-year bonds. PEF used the average of the coupon rates for a ten-year issuance of 6.63 percent and a thirty-year issuance of 7.33 percent. PEF based its estimate of the ten-year coupon rate on an estimated spread of 197 basis points above a forecasted U.S. Treasury yield of 4.66 percent. PEF based its estimate of the thirty-year coupon rate on an estimated spread of 207 basis points above a forecasted thirty-year U.S. Treasury yield of 5.26 percent. PEF's 6.98 percent interest rate was originally calculated in June 2008. PEF believes a blended coupon rate of 6.98 percent in 2010 is still a reasonable estimate given the continued uncertainty in the market and volatility in U.S. Treasury yields and credit spreads.

We believe that PEF's methodology to average the ten-year and thirty-year estimated bond yields to arrive at its estimate for the coupon rate of 6.98 percent is unreasonable. PEF's projected bond issuance on March 1, 2010, has a maturity of ten years. We believe it is more appropriate to use an estimated coupon rate that matches the maturity of the bond. We agree with OPC that PEF's projected yield of 6.98 percent is not reflective of current market interest rates. However, OPC did not provide testimony demonstrating what PEF's embedded cost of long-term debt would be using its proposed coupon rate of about 5.50 percent. Conversely, we agree with PEF that using the embedded cost rate for long-term debt from 2009 as a proxy for the rate in 2010 is not reasonable.

We believe the record reflects that 5.64 percent is the most reasonable estimate for the coupon rate of PEF's projected issuance of a new \$750 million bond on March 1, 2010. The ten-year U.S. Treasury forward curve from Bloomberg forecasts that the yield on ten-year U.S. Treasury bonds will be 3.67 percent on February 22, 2010. Adding PEF's estimated spread of 197 basis points for a ten-year bond to the forecasted ten-year U.S. Treasury bond yield of 3.67 percent results in an estimated coupon rate of 5.64 percent. The estimated interest rate of 5.64 percent is also in line with OPC's estimated interest rate. In his testimony, witness Woolridge provided a chart showing the yields on ten-year, A and BBB+ rated utility bonds. The current yield is 5.6 percent for BBB+ rated utility bonds. PEF's current S&P credit rating for its senior unsecured long-term debt is BBB+.

To calculate the appropriate embedded cost of long-term debt, we made an adjustment to MFR Schedule D-4a. We substituted PEF's estimated coupon rate of 6.98 percent with the coupon rate of 5.64 percent on line 15 in MFR Schedule D-4a. The result reduced the interest expense for the new issuance for the projected test year. The lower interest expense reduced the embedded cost rate of long-term debt from 6.42 percent to 6.18 percent. As such, we believe the record reflects that the more reasonable estimate of the coupon rate for PEF's projected issuance of a new \$750 million bond on March 1, 2010, is 5.64 percent. Accordingly, we find that the appropriate embedded cost rate for long-term debt for the projected test year is 6.18 percent.

I. Return on Equity

Two witnesses testified in this proceeding regarding the appropriate return on equity (ROE) for PEF. PEF witness Vander Weide recommended an ROE of 12.54 percent. OPC witness Woolridge recommended an ROE of 9.75 percent. As expressly stated in the 2005 Stipulation, PEF does not currently have an authorized ROE.³⁷ However, for purposes other than reporting or assessing earnings (such as cost recovery clauses or AFUDC), the 2005 Stipulation provided for PEF to use an ROE of 11.75 percent.

The statutory principles for determining the appropriate rate of return for a regulated utility are set forth by the U.S. Supreme Court in its Hope and Bluefield decisions.³⁸ These decisions define the fair and reasonable standards for determining rate of return for regulated enterprises. Namely, these decisions hold that the authorized return for a public utility should be commensurate with returns on investments in other companies of comparable risk, sufficient to maintain the financial integrity of the company, and sufficient to maintain its ability to attract capital under reasonable terms.

While the logic of the legal and economic concepts of a fair rate of return are fairly straight-forward, the actual implementation of these concepts is controversial. Unlike the cost rate on debt that is fixed and known due to its contractual terms, the cost of equity is a forward-looking concept and must be estimated. Financial models have been developed to estimate the

³⁷ Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc., p. 3 – 4.

³⁸ Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591 (1944); and Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923).

investor-required ROE for a company. Market-based approaches such as the Discounted Cash Flow (DCF) model, Capital Asset Pricing Model (CAPM), and *ex ante* Risk Premium (RP) model are generally recognized as being consistent with the market-based standards of a fair return enunciated in the Hope and Bluefield decisions.

1. Discounted Cash Flow Model

Both witnesses used the Discounted Cash Flow (DCF) model to estimate the investor-required ROE for PEF. Because PEF is a wholly-owned subsidiary of Progress Energy, its common stock is not publicly traded. To apply the model, each witness had to select a group of companies with publicly traded stock to serve as a proxy for PEF.

a. PEF witness Vander Weide

To select his group of comparable companies, PEF witness Vander Weide started with all electric utilities followed by Value Line Investment Survey (Value Line). From this initial sample, he removed all companies that were actively involved in a merger, had reduced or eliminated its dividend in the last two years, or had not paid a dividend in every quarter of the last two years. He further narrowed his proxy group by including only the companies with an investment grade bond rating; a Value Line Safety Rank of 1, 2, or 3; and had at least three analyst projections included in the I/B/E/S earnings growth forecast. Based on this selection criteria, witness Vander Weide identified a group of 24 companies in his direct testimony and a group of 32 companies in his rebuttal testimony that he testified represented "a reasonable proxy for the risk of investing in PEF."

Witness Vander Weide used the quarterly DCF model. In his direct testimony, he relied on stock prices for the three month period ended November 2008 and in his rebuttal testimony he relied on stock prices for the three month period ended July 2009. All stock prices were as reported by Thomson Reuters. He derived the estimated quarterly dividends based on past dividends as reported by Value Line. In his direct testimony, he relied on five year forecasts of earnings per share (EPS) growth rates from I/B/E/S as of November 2008 and in his rebuttal testimony he relied on EPS growth rates as of July 2009. His DCF model included a five percent adjustment for flotation costs.

The result of witness Vander Weide's DCF model based on data as of November 2008 indicated a market-weighted average cost of equity of 12.3 percent. The result of his DCF model based on data as of July 2009 indicated a market-weighted average cost of equity of 11.5 percent.

b. OPC witness Woolridge

To select his group of comparable companies, OPC witness Woolridge started with all electric utilities followed by Value Line and AUS Utility Reports. From this initial sample, he removed all companies that did not have an investment grade bond rating from Moody's and/or S&P, and a three year history of paying dividends. He further narrowed his proxy group by focusing on companies with operating revenues less than \$15 billion and that generate at least 75 percent of their operating revenues from regulated electric operations. Based on this selection

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criteria, witness Woolridge identified a group of 15 comparable companies for use in his analysis.

Witness Woolridge used the annual DCF model. He relied on dividend yields for the six month period ended July 2009 and for the month of July 2009 as reported by AUS Utility Reports. He relied on Value Line's historical and projected growth rate estimates for EPS, dividends per share (DPS), and book value per share (BVPS). In addition, he used the average EPS growth rate forecasts from Yahoo First Call, Zacks, and Reuters and the expected growth rate as measured by the earnings retention method. Witness Woolridge's DCF analysis did not include an adjustment for flotation costs. In addition to applying the DCF model to his own proxy group, witness Woolridge also applied his model to the proxy group identified in witness Vander Weide's direct testimony. The indicated return from witness Woolridge's DCF analysis is 10.3 percent when applied to his proxy group and 10.5 percent when applied to witness Vander Weide's proxy group.

c. Rebuttal

Each witness filed testimony challenging the reasonableness of certain aspects of the other witness' DCF analysis. Both witnesses used generally accepted versions of the DCF model, similar estimates of the dividend yields, and relatively comparable proxy groups from a risk perspective. The primary reason for the difference in indicated returns between the two witnesses' DCF analyses is their respective estimates of the growth rate to include in the DCF model.

PEF witness Vander Weide used five year forecasts of analyst estimates of future EPS growth as reported by I/B/E/S in his DCF analysis. The average growth rate included in witness Vander Weide's DCF model was 7.3 percent. He testified that he relied exclusively on analyst forecasts of EPS growth to estimate the investor-expected growth rate in the DCF model because there is empirical evidence that investors rely on analysts' forecasts to estimate future earnings growth.

OPC witness Woolridge used historical and projected growth rate estimates for EPS, DPS, and BVPS from Value Line; analyst EPS growth rates from Yahoo First Call, Zacks, and Reuters; and an estimate of the sustainable growth rate to develop the growth rate estimate used in his DCF analysis. The average growth rate included in witness Woolridge's DCF model was 4.75 percent. He testified that he did not rely exclusively on EPS forecasts because the appropriate growth rate in the DCF model is the dividend growth rate, not the EPS growth rate, and because evidence indicates Wall Street security analyst EPS forecasts are overly optimistic and upwardly biased. Witness Woolridge acknowledged that over the long-run, dividend and earnings will grow at a similar growth rate. He also testified that investors presumably will use some combination of historical and/or projected growth rates for earnings and dividends in their analyses. For these reasons, witness Woolridge relied on a number of measures for growth in his DCF analysis, not just EPS growth rates.

Relative to the impact the growth rate used in a DCF analysis has on the indicated return, the other differences between the two witnesses' application of the DCF model are rather modest

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in comparison. The incremental difference in indicated returns between a quarterly DCF model and an annual DCF model is approximately 17 basis points. The incremental difference in indicated returns between a DCF analysis with an adjustment for flotation costs and a DCF model without this adjustment is approximately 25 basis points. Any difference related to which witness' electric utility proxy group is more comparable to PEF was not considered to be meaningful in this case. As a result, the decision regarding which DCF result is more indicative of investors' required return for an investment in PEF comes down to which witness' estimate of growth is believed to be more appropriate.

2. Capital Asset Pricing Model (CAPM)

Both witnesses relied on the CAPM approach to estimate the investor-required ROE for PEF. For the reason discussed earlier, the witnesses used their respective proxy groups for certain inputs to their CAPM analyses.

a. PEF witness Vander Weide

PEF witness Vander Weide performed both an ex ante and an ex post CAPM analysis. For his estimate of the risk-free rate, he used the forecasted yield on 10-year and 30-year U.S. Treasury bonds as published by Blue Chip Financial Forecast (Blue Chip) to derive the forecasted yield on 20-year U.S. Treasury bonds of 4.87 percent used in his analysis. For the estimate of the company-specific risk, or beta, he used the average Value Line beta for his group of proxy companies of .79. He derived a risk premium of 8.83 percent for use in his ex ante, or DCF-based, CAPM analysis and a risk premium of 7.10 percent for use in his ex post, or historical, CAPM analysis. Witness Vander Weide's analysis indicated a return of 11.8 percent based on his ex ante CAPM approach and a return of 10.7 percent based on his ex post CAPM approach.

b. OPC witness Woolridge

OPC witness Woolridge performed an ex ante CAPM analysis. For the risk-free rate, he used an estimate of the forward-looking yield on 30-year U.S. Treasury bonds of 4.50 percent. For beta, he used the average Value Line beta for his group of proxy companies of .70. He determined an expected risk premium of 4.37 percent based on the results of various studies of historical risk premium, ex ante risk premium studies, and equity risk premium surveys. Witness Woolridge's CAPM analysis indicated an ROE of 7.6 percent.

c. Rebuttal

Each witness filed testimony challenging the reasonableness of certain aspects of the other witness' CAPM analysis. Both witnesses used relatively similar betas (.79 and .70). While their respective estimates of the risk-free rate are not that similar (4.87 percent and 4.50 percent, respectively), the primary reason for the difference in their indicated CAPM results is the significant difference between their respective risk premium estimates.

Witness Vander Weide testified that the average yield on Moody's Baa-rated utility bonds over the last year was 7.72 percent. Since an investment in a company's equity is more risky than an investment in its bonds, a company's cost of equity should be higher than its cost of debt. Because witness Woolridge's CAPM estimate of 7.6 percent is less than the average yield on Baa-rated utility bonds, witness Vander Weide testified that witness Woolridge's CAPM result is below a reasonable range of estimates of PEF's cost of equity.

Witness Woolridge testified that witness Vander Weide's CAPM results are unreasonable because the risk-free rate and risk premiums witness Vander Weide used in his analysis are overstated. As noted above, witness Vander Weide used a risk-free rate of 4.87 percent. Witness Woolridge testified that the current risk-free rate is approximately 4.00 percent. In addition, witness Woolridge testified that witness Vander Weide's risk premiums of 7.10 and 8.83 percent are inflated and excessive. For these reasons, witness Woolridge testified that witness Vander Weide's CAPM results are above a reasonable range of estimates of PEF's cost of equity.

While each witness disagreed with the other witnesses' approach to performing the CAPM analysis, they both agreed that under current market conditions the CAPM produced less reliable cost of equity results for electric utilities at this time. Witness Vander Weide testified that due to the efforts of the U.S. Treasury to keep interest rates low, the spread between the risk-free rate and the interest rate on public utility debt has increased. Because the CAPM relates the cost of equity to the yield on government securities, and yields on government securities are abnormally low due to the U.S. Treasury's efforts to stimulate the economy, he believes the CAPM approach understates the utility cost of equity. In his own analysis, witness Woolridge gave primary weight to his DCF analysis in determining his recommended ROE for PEF.

3. Risk Premium (RP) Model

In addition to the DCF and CAPM analyses, PEF witness Vander Weide also performed two versions of the RP analysis. In his ex ante RP method, he applied his DCF model to the Moody's Index of electric companies. He compared the results of this DCF analysis to the concurrent interest rate on Moody's A-rated bonds. This comparison indicated an estimated risk premium of 4.9 percent. He derived a forecasted yield to maturity on A-rated utility bonds of 6.3 percent based on information from the December 2008 Blue Chip. Based on this approach, witness Vander Weide's ex ante RP model indicated an ROE of 11.2 percent.

In his ex post RP method, witness Vander Weide relied on historical, earned returns for the S&P 500 stock portfolio and the S&P Utilities stock portfolio for the period 1937 – 2008. The average annual return on an investment in the S&P 500 stock portfolio is 11.4 percent and the average annual return on an investment in the S&P Utilities stock portfolio is 11.0 percent. The average annual return on an investment in the Moody's A-rated utility bond portfolio was 6.4 percent. Thus, he concluded that the risk premium on the S&P 500 index is 5.0 percent and on the S&P Utility index is 4.6 percent. He used the average of these two risk premiums, or 4.8 percent, as his estimate of the risk premium in this approach. Adding the 4.8 percent risk premium to the forecasted interest rate on Moody's A-rated bonds of 6.3 percent discussed earlier, he obtained an indicated ROE of 11.1 percent. Adding 25 basis points for flotation costs,

witness Vander Weide obtained an estimate of 11.4 percent as the cost of equity for PEF using the ex post risk premium method.

OPC witness Woolridge testified that there are a number of errors in PEF witness Vander Weide's RP analyses. Witness Woolridge testified that witness Vander Weide's ex ante RP result is overstated due to an inflated base interest rate and an excessive risk premium. He testified that the current yield on long-term, A-rated utility bonds is less than 6.0 percent, well below the 6.3 percent assumed in witness Vander Weide's analysis. In addition, witness Woolridge testified that witness Vander Weide's ex ante, or DCF-based, RP method suffers from the same deficiencies discussed earlier in the section on the stand-alone DCF model. Because witness Vander Weide's DCF component to this approach relied exclusively on EPS growth and thus overstated investor-required returns, witness Woolridge testified that this approach produced upwardly biased results.

Witness Woolridge testified that witness Vander Weide ex post RP method suffered from similar flaws. The issue related to the base interest rate was discussed above. In addition, witness Woolridge testified that witness Vander Weide's ex post risk premium is excessive because he relied on historical, earned returns to estimate the forward-looking market risk premium. Witness Woolridge noted the numerous academic studies and other empirical evidence which demonstrate that using the historical relationship between stocks and bond returns to measure an ex ante risk premium is erroneous.

4. Adjustments

In arriving at his recommended return of 12.54 percent for PEF, witness Vander Weide made two specific adjustments in his analysis. To allow for the recovery of flotation costs associated with the issuance of common equity, he made an adjustment to his DCF model and DCF-based CAPM and RP approaches that equates to 25 basis points. For his non-DCF-based CAPM and RP approaches, he added 25 basis points to the indicated returns. Witness Vander Weide testified that all firms that have sold securities in the capital markets have incurred some level of flotation costs, including underwriters' commissions, legal fees, printing costs, etc. He stated that these costs range between three and five percent of the proceeds of an equity issuance. In addition to these costs, for large equity issuances, there can be a decline in the price of the shares. On average, he said that the decline due to market pressure has been from two to three percent of the proceeds. Thus, total flotation costs, including both issuance expense and market pressure, could range from five to eight percent of the proceeds of an equity issuance. For this reason, witness Vander Weide believed a five percent allowance for flotation costs was a conservative estimate that should be recognized in the determination of the ROE.

OPC witness Woolridge testified that it is not necessary to make an upward adjustment to the cost of equity for the recovery of flotation costs. He stated that PEF has not identified any actual flotation costs for the Company. In addition, because electric utilities have market-to-book ratios in excess of 1.0x, he testified that there should be a flotation cost reduction (and not increase) to the equity cost rate. Finally, he argued that investors also incur transaction costs when they purchase shares. If these transaction costs are taken into account, the price of shares would be higher. If witness Vander Weide had included these transaction costs in his DCF

analysis, the higher effective stock prices paid for stocks would have led to lower dividend yields. This would have resulted in a downward adjustment to his DCF equity cost rate. For these reasons, witness Woolridge testified that it is unnecessary to recognize a flotation cost adjustment in the determination of the investor-required ROE.

Based on his application of the various cost of equity models, witness Vander Weide concluded that the cost of equity for his proxy group was 11.5 percent. However, because the average market value equity ratio of the companies in his proxy group exceeded the book value equity ratio of PEF that would be recognized for purposes of setting rates, he argued it was necessary to make a leverage adjustment to equate PEF's weighted average cost of capital on a book value basis to the weighted average cost of capital for his proxy group on a market value basis. This adjustment equated to 104 basis points, and when added to his indicated return for the proxy group of 11.5 percent, produced the 12.54 percent ROE witness Vander Weide recommends is a fair rate of return on equity for PEF.

OPC witness Woolridge testified that this leverage adjustment is unwarranted. He testified that witness Vander Weide's proposed adjustment inappropriately mixes book value and market value equity capitalization ratios. He noted that financial publications, investment firms, and this Commission report work with capitalization ratios on a book value basis, not a market value basis. Moreover, to the extent that a company's market value exceeds its book value, witness Wooldridge testified that this shows that the company is earning a return on equity in excess of its cost of equity. Finally, witness Woolridge noted that witness Vander Weide could not identify any proceeding in which the regulatory commission had adopted his leverage adjustment.

5. Analysis

Based on a literal reading of the testimony in this proceeding, the record could support an authorized ROE within the range of 7.6 percent to 12.54 percent. As noted earlier, the witnesses' recommended returns suggest a range of 9.75 percent to 12.54 percent.

Both witnesses recognized that the generally accepted models used for estimating ROE are based on a number of restrictive assumptions. Under normal economic circumstances, the relaxation of these assumptions for the practical application of these models is generally understood. And while the state of the economy has improved since the market disruption in the fall of 2008, the economic recovery is still somewhat tenuous. This realization does not mean the models no longer have value; rather, it is particularly important at this point in time to exercise informed judgment in the application of the models.

Each witness argued that the other witness made certain assumptions in the application of their respective DCF analysis that either understated or overstated the investor-required ROE for PEF. As discussed earlier, the majority of the differences between the two witnesses' respective DCF approaches have only a marginal impact on the difference in the indicated returns. The primary reason for the difference in the witnesses' DCF results relates to their respective estimates of the growth rate to include in the DCF model. The results of the witnesses' DCF analyses based on financial data as of July 2009 produced a range of 10.3 percent to 11.5

percent. Recognizing that the top end of this range represents a DCF result based exclusively on EPS growth forecasts, we believe this is a conservatively high estimate of the investor-required return.

Each witness argued that the other witness made certain assumptions in the application of their respective CAPM approaches that either understated or overstated the investor-required ROE for PEF. However, recognizing the impact the Federal Government's unprecedented intervention in the capital markets has had on the yields on long-term Treasury bonds, we believe models that relate the investor-required return on equity to the yield on government securities, such as the CAPM approach, produce less reliable estimates of the ROE at this time.

Due to the academic studies and other empirical research documenting that RP models based on historical earned returns are poor predictors of current market expectations, we have reservations regarding the reliability of the results of witness Vander Weide's ex post RP model. While witness Woolridge also expressed concerns regarding the results of witness Vander Weide's ex ante RP model as well, we note that witness Vander Weide's ex ante risk premium of 4.9 percent is not significantly greater than witness Woolridge's ex ante risk premium of 4.4 percent.

Both witnesses made persuasive arguments for including and not including an allowance for the recovery of flotation costs in the determination of the ROE. While it has been our practice to recognize an adjustment for flotation costs in certain applications, the determination of an authorized ROE by a regulatory commission in an evidentiary proceeding very seldom involves the level of specificity that would permit the itemization of a specific allowance for flotation costs. In this context, the debate over whether to include or not include an allowance for flotation costs is similar to the debate over whether to use an annual or quarterly DCF model or a blended growth rate or an earnings-only growth rate in the DCF analysis. The approved ROE does not specifically recognize or exclude an allowance for flotation costs but rather represents a blend of the results of the witnesses' analyses, some that include and others that do not include an adjustment for flotation costs.

We do not believe witness Vander Weide's proposed 104 basis point leverage adjustment to his estimated equity cost rate is appropriate. While the logic of the leverage adjustment proposed by witness Vander Weide is sound, the inappropriate mixing of market value and book value capitalization ratios in the formula is a fatal flaw. Witness Vander Weide testified that PEF's ratemaking capital structure contained an appropriate mix of debt and equity and was an appropriate capital structure for ratemaking purposes. In addition, he was afforded multiple opportunities to make a comparison of PEF's ratemaking capital structure to the equivalent capital structures of the investor-owned utilities (IOUs) of the companies in his proxy group but declined to do so. Finally, even though he testified that he has been including this leverage adjustment in ROE testimony since the early 1990's, witness Vander Weide was unable to identify any Commission decision involving an electric utility that had recognized this adjustment.

Due to the reliance on historical earned returns to estimate the current risk premium in the ex post CAPM and RP models, concerns over the exclusive reliance on EPS growth rates in

the DCF analyses, and the decision to recognize an inappropriately quantified leverage adjustment, we believe the Company's requested ROE of 12.54 percent overstates the current investor-required ROE for PEF. Conversely, recognizing that the marginal cost of long-term, single A-rated utility bonds is near 6.0 percent, we believe returns in the single digits as recommended by the Intervenors may understate the investor-required ROE in the current market.

Finally, Exhibit 264 reports the authorized ROEs set during 2009 for the electric utilities followed by Regulatory Research Associates (RRA). The ROEs set during 2009 ranged from a low of 8.75 percent to a high of 11.5 percent and averaged 10.51 percent for the group. While we do not believe the authorized ROE for PEF should necessarily be based upon the average return set by Commissions during 2009, we do not believe recommended returns significantly above or below this level are indicative of the investor-required return for PEF, either.

Based on the foregoing, we find that an authorized ROE of 10.5 percent with a range of plus or minus 100 basis points is appropriate. In arriving at this return, we have weighed the identified strengths and weaknesses associated with the respective witness' analyses. We have also taken into account PEF's proposed construction program and its need to access the capital markets under reasonable terms. In addition, we also considered the equity ratio previously discussed. We find that an authorized ROE of 10.5% is supported by competent, substantial evidence in the record and satisfies the standards set forth in the Hope and Bluefield decisions of the U.S. Supreme Court regarding a fair and reasonable return for the provision of regulated service.

J. Weighted Average Cost of Capital

The weighted average cost of capital is dependent upon other factors, including but not limited to, accumulated deferred income taxes, unamortized investment tax credit, imputed equity adjustment for purchased power obligations, equity ratio, reconciliation of rate base to capital structure, jurisdictional capital structure, cost rate for short-term debt, cost rate for long-term debt, and the appropriate return on equity. Based on our decision, the weighted average cost of capital is 7.88 percent.

The net effect of these adjustments is a decrease in the overall cost of capital from the 9.21 percent return requested by PEF to a return of 7.88 percent. Schedule 2, attached hereto, reflects the test year capital structure. Based upon the proper components, amounts, and cost rates associated with the capital structure for the test year, we find that the appropriate weighted average cost of capital for PEF for purposes of setting rates in this proceeding is 7.88 percent.

IX. NET OPERATING INCOME

A. Total Operating Revenues

Based on our approved stipulations, there are no adjustments to PEF's forecasts of customers, kWh, kw, inflation factors or billing determinants for the 2010 projected test year. However revenues at current rates for the projected test year should be increased by

SCHEDULE 5

PROGRESS ENERGY FLORIDA, INC.
DOCKET NO. 090079-EI
DECEMBER 2010 PROJECTED TEST YEAR
OPERATING REVENUE INCREASE CALCULATION

Line No.	As Filed	Commission Adjusted
1. Rate Base	\$6,238,617,000	\$6,302,278,075
2. Overall Rate of Return	<u>9.21%</u>	<u>7.88%</u>
3. Required Net Operating Income (1)x(2)	574,577,000	496,619,512
4. Achieved Net Operating Income	<u>268,546,000</u>	<u>496,619,512</u>
5. Net Operating Income Deficiency (3)-(4)	306,031,000	0
6. Net Operating Income Multiplier	<u>1.63380</u>	<u>1.63381</u>
7. Operating Revenue Increase (5)x(6)	<u>\$499,997,000</u> *	<u>\$0</u> **

NOTES: * PEF's requested operating revenue increase of \$499,997,000 includes the operating revenue requirements associated with the Bartow Repowering Project. PEF's current base rates include the \$126,212,000 base rate increase for the Bartow repowering Project that was authorized in Order No. PSC-09-0415-PAA-EI, issued June 12, 2009, in Docket No. 090144-EI, In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc. The effective date for implementing the base rate increase was the first billing cycle in July 2009.

** For comparative purposes, the Bartow Repowering Project base rate increase of \$126,212,000 should be added to any authorized base rate increase.

Exhibit 16

PUBLIC VERSION



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,

A handwritten signature in black ink, appearing to read "Christopher King".

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

PUBLIC VERSION

**DUKE ENERGY FLORIDA
RATE OF RETURN REPORT SUMMARY
Dec-19**

SCHEDULE 1

	(1) Actual Per Books	(2) FPSC Adjustments	(3) FPSC Adjusted	(4) Pro Forma Adjustments	(5) Pro Forma Adjusted
I. AVERAGE RATE OF RETURN (Jurisdictional)					
Net Operating Income	\$857,245,757	(a) (\$21,510,452)	\$835,735,305	(\$15,426,372)	\$820,308,932
Average Rate Base	\$14,427,391,145	(b) (\$1,375,774,624)	\$13,051,616,521	\$0	\$13,051,616,521
Average Rate of Return	5.94%		6.40%		6.29%
I. YEAR END RATE OF RETURN (Jurisdictional)					
Net Operating Income	\$850,139,681	(\$14,404,377)	\$835,735,305		
Average Rate Base	\$15,187,759,739	(\$1,525,890,666)	\$13,661,869,072		
Average Rate of Return	5.60%		6.12%		
(a) INCLUDES AFUDC EARNINGS					
(b) INCLUDES REVERSAL OF AFUDC EARNINGS					

III. REQUIRED RATES OF RETURN	Average Capital Structure	End of Period Capital Structure
FPSC Adjusted Basis		
Low Point	5.85%	5.84%
Mid Point	6.27%	6.26%
High Point	6.68%	6.69%
Pro Forma Adjusted Basis		
Low Point	5.85%	5.84%
Mid Point	6.27%	6.26%
High Point	6.68%	6.69%

IV. FINANCIAL INTEGRITY INDICATORS

A. T.I.E. with AFUDC	3.76	(System Per Books Basis)
B. T.I.E without AFUDC	3.74	(System Per Books Basis)
C. AFUDC to Net Income	1.16%	(System Per Books Basis)
D. Internally Generated Funds	69.21%	(System Per Books Basis)
E. STD/LTD to Total Investor Funds		
LT Debt-Fixed to Total Investor Funds	47.75%	(FPSC Adjusted Basis)
ST Debt to Total Investor Funds	1.70%	(FPSC Adjusted Basis)
F. Return on Common Equity	10.83%	(FPSC Adjusted Basis)
	10.55%	(Pro Forma Adjusted Basis)
G. Current Allowed AFUDC Rate	6.46%	Docket 20190069-EI

I am aware that Section 837-06, Florida Statutes, provides:

Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775-084


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

2/14/2020

Date

DUKE ENERGY FLORIDA
Average Rate of Return - Rate Base
Dec-19

Schedule 2
Page 1 of 3

	Plant in Service	Accum Depr & Amort	Net Plant in Service	Future Use & Appd Unrecov Plant	Const Work in Progress	Net Utility Plant	Working Capital	Total Average Rate Base
System Per Books	\$19,004,096,212	\$5,572,343,381	\$13,431,752,831	\$133,438,048	\$923,016,466	\$14,488,207,346	\$1,453,652,092	\$15,941,859,438
Regulatory Base - Retail	\$17,259,963,762	\$5,138,638,844	\$12,121,324,918	\$117,226,754	\$757,921,606	\$12,996,473,277	\$1,430,917,867	\$14,427,391,145
FPSC Adjustments								
ARO	(22,308,467)	(19,746,044)	(2,562,424)			(2,562,424)	(14,761,290)	(17,323,713)
ECCR	(22,829,189)	(16,589,873)	(6,239,316)			(6,239,316)	(20,632,657)	(26,871,973)
ECRC	(241,003,547)	(24,802,388)	(216,201,158)		(14,532,352)	(230,733,510)	(4,252,558)	(234,986,069)
FUEL	(8,082,918)	(7,825,377)	(257,541)			(257,541)	(103,497,060)	(103,754,601)
CCR							(120,704,193)	(120,704,193)
NUCLEAR							(21,090,111)	(21,090,111)
OverUnder Recovery-Clauses							(134,772,044)	(134,772,044)
Derivatives							3,503,164	3,503,164
Investments Earning a Return							(200,987,127)	(200,987,127)
Jobbing Accounts							197,864	197,864
Non-Regulated and Miscellaneous	(44,477,580)	(36,005,034)	(8,472,547)	(87,379,077)		(95,851,624)	44,927,533	(50,924,090)
CWIP - AFUDC					(117,961,139)	(117,961,139)		(117,961,139)
Imputed Off Balance Sheet Obligations							47,132,283	47,132,283
Capital Lease	(548,027,858)	(68,268,360)	(479,759,498)			(479,759,498)	468,847,239	(10,912,259)
Storm							(386,320,616)	(386,320,616)
Total FPSC Adjustments	(886,729,559)	(173,237,076)	(713,492,483)	(87,379,077)	(132,493,491)	(933,365,051)	(442,409,573)	(1,375,774,624)
FPSC Adjusted	\$16,373,234,203	\$4,965,401,768	\$11,407,832,435	\$29,847,677	\$625,428,115	\$12,063,108,227	\$988,508,294	\$13,051,616,521

DUKE ENERGY FLORIDA
Average Rate of Return - Income Statement
Dec-19

Schedule 2
Page 2 of 3

	Operating Revenues	Fuel & Net Interchange	O&M Other	Depr & Amort	Taxes Other than Income	Income Taxes Current	Deferred Income Tax (Net)	Gain/Loss on Disp. & Other	Total Operating Expenses	Net Operating Income
System Per Books	5,088,725,458	2,012,155,693	973,447,665	648,194,818	390,140,482	(41,723,961)	179,017,700		4,161,232,395	927,493,062
Regulatory Base - Retail	4,792,965,248	1,910,036,311	929,834,494	603,052,882	376,113,778	(53,049,976)	176,838,077		3,942,825,567	850,139,681
FPSC Adjustments										
ECCR	(104,375,287)		(98,849,041)	(3,874,854)		(418,545)			(103,142,440)	(1,232,847)
ECRC	(55,456,774)		(24,841,141)	(10,868,798)	(1,437,682)	(4,640,455)			(41,788,076)	(13,668,698)
FUEL	(1,554,377,846)	(1,540,916,328)	(1,115,629)	(6,551,340)		(1,468,628)			(1,550,051,926)	(4,325,920)
CCR	(383,829,448)	(369,119,983)	(276,357)	(5,974,551)		(2,143,821)			(377,514,712)	(6,314,736)
NUCLEAR	(43,813,337)		(119,912)	(43,519,983)		(43,959)			(43,683,854)	(129,483)
Non-Regulated and Miscellaneous				(227,898)		57,761			(170,137)	170,137
Corporate Aircraft Allocation			(2,407,270)			610,122			(1,797,147)	1,797,147
Franchise Fee & Gross Receipts	(231,786,526)		(166,886)			(58,703,998)			(58,870,884)	(172,915,642)
Franchise Fees & Gross Rec Tax - TOI					(235,781,982)	59,758,943			(176,023,038)	176,023,038
Gain/Loss on Disposition & Other						64,196	(253,287)	(189,091)	189,091	
Inst./Promotional Advertising			(916,113)			232,189			(683,924)	683,924
Miscellaneous Interest Expense			85,675			(21,714)			63,961	(63,961)
Remove Assoc/Organization Dues			(92,050)			23,330			(68,720)	68,720
Remove Economic Development			(57,299)			14,522			(42,777)	42,777
Parent Debt Adjustment						(11,182,398)			(11,182,398)	11,182,398
Directors & Officers Premium			(1,024,752)			259,723			(765,029)	765,029
Interest Synchronization - FPSC						6,675,352			6,675,352	(6,675,352)
Total FPSC Adjustments	(2,373,639,217)	(1,910,036,311)	(129,780,774)	(71,017,424)	(237,219,663)	(10,927,380)	(253,287)	(2,359,234,840)	(14,404,377)	
FPSC Adjusted	2,419,326,031		800,053,720	532,035,458	138,894,115	(63,977,356)	176,838,077	(253,287)	1,583,590,726	835,735,305
Pro Forma Adjustments										
Weather Normalization	(20,663,549)					(5,237,176)			(5,237,176)	(15,426,372)
Total Pro Forma Adjustments	(20,663,549)					(5,237,176)			(5,237,176)	(15,426,372)
Pro Forma Adjusted	2,398,662,482		800,053,720	532,035,458	138,894,115	(69,214,533)	176,838,077	(253,287)	1,578,353,550	820,308,932
Current Month										
System Per Books	356,830,211	134,965,835	102,292,961	57,420,046	36,493,576	(40,148,290)	35,456,800		326,480,928	30,349,283
FPSC Adjusted	172,115,812		89,750,250	46,864,958	13,683,829	(23,040)	98,855	(21,262)	150,353,590	21,762,222

(a) The addition of earnings from AFUDC charges would increase the System NOI by 8,653,962 pretax
(b) The addition of earnings from AFUDC charges would increase the Jurisdictional NOI by 7,106,075 pretax

DUKE ENERGY FLORIDA
Average Rate of Return - Adjustment
Dec-19

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Notes	Rate Base Adjustments	P=ProForma F=FPSC	System	Retail
	ARO	F	(17,323,713)	(17,323,713)
	ECCR	F	(26,871,973)	(26,871,973)
	ECRC	F	(253,827,077)	(234,966,069)
	FUEL	F	(103,774,329)	(103,754,601)
	CCR	F	(120,704,193)	(120,704,193)
	NUCLEAR	F	(21,090,111)	(21,090,111)
	Over\Under Recovery-Clauses	F	(134,772,044)	(134,772,044)
	Derivatives	F	3,503,164	3,503,164
	Investments Earning a Return	F	(200,987,127)	(200,987,127)
	Jobbing Accounts	F	197,864	197,864
	Non-Regulated and Miscellaneous	F	(57,617,336)	(50,924,090)
(1)	CWIP - AFUDC	F	(145,296,974)	(117,981,139)
(3)	Imputed Off Balance Sheet Obligations	F	50,742,621	47,132,283
(2)	Capital Lease - EPIS	F	(519,611,900)	(479,759,498)
(2)	Capital Lease - Working Capital	F	502,941,654	468,847,239
	Storm	F	(386,320,616)	(386,320,616)
	Total		(1,430,812,091)	(1,375,774,624)

Notes	Income Statement Adjustments (to NOI)	P=ProForma F=FPSC	System		Retail	
			Amount	Income Tax Effect	Amount	Income Tax Effect
	ECCR	F	(1,651,392)	418,545	(1,651,392)	418,545
	ECRC	F	(15,684,495)	3,975,235	(18,309,153)	4,640,455
	FUEL	F	(6,104,352)	1,547,148	(5,794,548)	1,468,628
	CCR	F	(8,458,557)	2,143,821	(8,458,557)	2,143,821
	NUCLEAR	F	(173,442)	43,959	(173,442)	43,959
	Non-Regulated and Miscellaneous	F	227,898	(57,761)	227,898	(57,761)
(2)	Corporate Aircraft Allocation	F	2,582,325	(654,490)	2,407,270	(610,122)
(1)	Franchise Fee & Gross Receipts	F	(231,619,640)	58,703,998	(231,619,640)	58,703,998
(1)	Franchise Fees & Gross Rec Tax - TOI	F	235,781,982	(59,758,943)	235,781,982	(59,758,943)
(1)	Gain/Loss on Disposition & Other	F	272,689	(69,113)	253,287	(64,196)
(1)	Inst/Promotional Advertising	F	982,733	(249,074)	916,113	(232,189)
(1)	Miscellaneous Interest Expense	F	(91,905)	23,293	(85,675)	21,714
(1)	Remove Assoc/Organization Dues	F	98,744	(25,027)	92,050	(23,330)
(4)	Remove Economic Development	F	61,466	(15,579)	57,299	(14,522)
(2)	Parent Debt Adjustment	F		12,377,257		11,182,398
(2)	Directors & Officers Premium	F	1,099,272	(278,610)	1,024,752	(259,723)
(1)	Interest Synchronization - FPSC	F		(6,955,038)		(6,675,352)
	Total		(22,676,675)	11,169,623	(25,331,757)	10,927,380

Notes: (1) Docket No. 910890-EI, Order No. PSC 92-0208-FOF-EI
(2) Docket No. 090079-EI, Order No. PSC 10-0131-FOF-EI
(3) Docket No. 130208-EI, Order No. PSC 13-0598-FOF-EI
(4) Rule 25-6.0426 Recovery of Econ Dev Expenses

DUKE ENERGY FLORIDA
End of Period Rate of Return - Rate Base
Dec-19

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	Plant in Service	Accum Depr & Amort	Net Plant in Service	Future Use & Appd Unrecov Plant	Const Work in Progress	Net Utility Plant	Working Capital	Total Period End Rate Base
System Per Books	\$19,859,880,136	\$5,711,655,343	\$14,148,224,793	\$135,974,616	\$1,032,580,981	\$15,316,780,389	\$1,453,642,882	\$16,770,423,272
Regulatory Base - Retail	\$18,048,491,989	\$5,273,402,817	\$12,775,089,172	\$118,320,091	\$863,432,608	\$13,756,841,871	\$1,430,917,867	\$15,187,759,739
FPSC Adjustments								
ARO	(26,982,766)	(22,749,602)	(4,233,164)			(4,233,164)	(14,761,290)	(18,994,454)
ECCR	(22,300,806)	(17,810,133)	(4,490,674)			(4,490,674)	(20,632,657)	(25,123,331)
ECRC	(253,101,138)	(27,569,515)	(225,531,624)		(7,541,006)	(233,072,629)	(4,252,558)	(237,325,188)
FUEL	(8,082,918)	(7,891,222)	(191,696)			(191,696)	(103,497,060)	(103,688,756)
CCR							(120,704,193)	(120,704,193)
NUCLEAR							(21,090,111)	(21,090,111)
OverUnder Recovery-Clauses							(134,772,044)	(134,772,044)
Derivatives							3,503,164	3,503,164
Investments Earning a Return							(200,987,127)	(200,987,127)
Jobbing Accounts							197,864	197,864
Non-Regulated and Miscellaneous	(43,847,050)	(36,688,437)	(7,158,612)	(87,379,077)		(94,537,690)	44,927,533	(49,610,156)
CWIP - AFUDC					(258,490,078)	(258,490,078)		(258,490,078)
Imputed Off Balance Sheet Obligations							47,132,283	47,132,283
Capital Lease	(650,556,433)	(162,091,270)	(488,465,163)			(488,465,163)	468,847,239	(19,617,924)
Storm							(386,320,616)	(386,320,616)
Total FPSC Adjustments	(1,004,871,111)	(274,800,179)	(730,070,933)	(87,379,077)	(266,031,084)	(1,083,481,093)	(442,409,573)	(1,525,890,666)
FPSC Adjusted	17,043,620,878	4,998,602,638	12,045,018,240	30,941,014	597,401,525	12,673,360,778	988,508,294	13,661,869,072

DUKE ENERGY FLORIDA
End of Period - Income Statement
Dec-19

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	Operating Revenues	Fuel & Net Interchange	O&M Other	Depr & Amort	Taxes Other than Income	Income Taxes Current	Deferred Income Tax (Net)	Gain/Loss on Disposition & Other	Total Operating Expenses	Net Operating Income
System Per Books	5,088,725,458	2,012,155,693	973,447,665	648,194,818	390,140,482	(41,723,961)	179,017,700		4,161,232,395	927,493,062
Regulatory Base - Retail	4,792,965,248	1,910,036,311	929,834,494	603,052,882	376,113,778	(53,049,976)	176,838,077		3,942,825,567	850,139,681
FPSC Adjustments										
ECCR	(104,375,287)		(98,849,041)	(3,874,854)		(418,545)			(103,142,440)	(1,232,847)
ECRC	(55,456,774)		(24,841,141)	(10,868,798)	(1,437,682)	(4,640,455)			(41,788,076)	(13,668,698)
FUEL	(1,554,377,846)	(1,540,916,328)	(1,115,629)	(6,551,340)		(1,468,628)			(1,550,051,926)	(4,325,920)
CCR	(383,829,448)	(369,119,983)	(276,357)	(5,974,551)		(2,143,821)			(377,514,712)	(6,314,736)
NUCLEAR	(43,813,337)		(119,912)	(43,519,983)		(43,959)			(43,683,854)	(129,483)
Non-Regulated and Miscellaneous				(227,898)		57,761			(170,137)	170,137
Coporate Aircraft Allocation			(2,407,270)			610,122			(1,797,147)	1,797,147
Franchise Fee & Gross Receipts	(231,786,526)		(166,886)			(58,703,998)			(58,870,884)	(172,915,642)
Franchise Fees & Gross Rec Tax - TOI					(235,781,982)	59,758,943			(176,023,038)	176,023,038
Gain/Loss on Disposition & Other						64,196	(253,287)		(189,091)	189,091
Inst./Promotional Advertising			(916,113)			232,189			(683,924)	683,924
Miscellaneous Interest Expense			85,675			(21,714)			63,961	(63,961)
Remove Assoc/Organization Dues			(92,050)			23,330			(68,720)	68,720
Remove Economic Development			(57,299)			14,522			(42,777)	42,777
Parent Debt Adjustment					(11,182,398)			(11,182,398)	11,182,398	
Directors & Officers Premium			(1,024,752)			259,723			(765,029)	765,029
Interest Synchronization - FPSC						6,675,352			6,675,352	(6,675,352)
Total FPSC Adjustments	(2,373,639,217)	(1,910,036,311)	(129,780,774)	(71,017,424)	(237,219,663)	(10,927,380)	(253,287)	(2,359,234,840)	(14,404,377)	
FPSC Adjusted	2,419,326,031	800,053,720	532,035,458	138,894,115	(63,977,356)	176,838,077	(253,287)	1,583,590,726	835,735,305	

(a) The addition of earnings from AFUDC charges would increase the System NOI by
(b) The addition of earnings from AFUDC charges would increase the Jurisdictional NOI by

8,653,962 pretax
7,106,075 pretax

DUKE ENERGY FLORIDA
End of Period Rate of Return - Adjustment
Dec-19

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Notes	Rate Base Adjustments	P=ProForma F=FPSC	System	Retail
ARO		F	(18,994,454)	(18,994,454)
ECCR		F	(25,123,331)	(25,123,331)
ECRC		F	(256,336,585)	(237,325,188)
FUEL		F	(103,703,440)	(103,688,756)
CCR		F	(120,704,193)	(120,704,193)
NUCLEAR		F	(21,090,111)	(21,090,111)
OverUnder Recovery-Clauses		F	(134,772,044)	(134,772,044)
Derivatives		F	3,503,164	3,503,164
Investments Earning a Return		F	(200,987,127)	(200,987,127)
Jobbing Accounts		F	197,864	197,864
Non-Regulated and Miscellaneous		F	(56,303,402)	(49,610,156)
CWIP - AFUDC		F	(302,037,995)	(258,490,078)
Imputed Off Balance Sheet Obligations		F	50,742,621	47,132,263
(3) Capital Lease - EPIS		F	(535,773,410)	(488,465,163)
(2) Capital Lease - Working Capital		F	502,941,654	468,847,239
(2) Storm		F	(386,320,616)	(386,320,616)
	Total		(1,604,761,405)	(1,525,890,666)

Notes	Income Statement Adjustments (to NOI)	P=ProForma F=FPSC	System		Retail	
			Amount	Income Tax Effect	Amount	Income Tax Effect
ECCR		F	(1,651,392)	418,545	(1,651,392)	418,545
ECRC		F	(15,684,495)	3,975,235	(18,309,153)	4,640,455
FUEL		F	(6,104,352)	1,547,148	(5,794,548)	1,468,628
CCR		F	(8,458,557)	2,143,821	(8,458,557)	2,143,821
NUCLEAR		F	(173,442)	43,959	(173,442)	43,959
Non-Regulated and Miscellaneous		F	227,898	(57,761)	227,898	(57,761)
(2) Corporate Aircraft Allocation		F	2,582,325	(654,490)	2,407,270	(610,122)
(1) Franchise Fee & Gross Receipts		F	(231,619,640)	58,703,998	(231,619,640)	58,703,998
(1) Franchise Fees & Gross Rec Tax - TOI		F	235,781,982	(59,758,943)	235,781,982	(59,758,943)
(1) Gain/Loss on Disposition & Other		F	272,689	(69,113)	253,287	(64,196)
(1) Inst./Promotional Advertising		F	982,733	(249,074)	916,113	(232,189)
(1) Miscellaneous Interest Expense		F	(91,905)	23,293	(85,675)	21,714
(1) Remove Assoc/Organization Dues		F	98,744	(25,027)	92,050	(23,330)
Remove Economic Development		F	61,466	(15,579)	57,299	(14,522)
(2) Parent Debt Adjustment		F		12,377,257		11,182,398
(2) Directors & Officers Premium		F	1,099,272	(278,610)	1,024,752	(259,723)
(1) Interest Synchronization - FPSC		F		(6,955,038)		(6,675,352)
	Total		(22,676,675)	11,169,623	(25,331,757)	10,927,380

Notes: (1) Docket No. 910890-EI, Order No. PSC 92-0208-FOF-EI
(2) Docket No. 090079-EI, Order No. PSC 10-0131-FOF-EI
(3) Docket No. 130208-EI, Order No. PSC 13-0598-FOF-EI

DUKE ENERGY FLORIDA
Average - Capital Structure
Pro Forma Adjusted Basis
Dec-19

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	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	<u>Low-Point</u>		<u>Mid-Point</u>		<u>High-Point</u>	
							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

DUKE ENERGY FLORIDA
End of Period - Capital Structure
Pro Forma Adjusted Basis
Dec-19

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	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	6,782,678,247	6,184,818,128	(463,288,650)	(13,493,436)	5,708,036,042	41.78%	9.50%	3.97%	10.50%	4.39%	11.50%	4.80%
Long Term Debt	6,767,509,962	6,170,986,853	(462,252,585)		5,708,734,268	41.79%	4.21%	1.76%	4.21%	1.76%	4.21%	1.76%
Short Term Debt *	(172,722,964)	(157,498,274)	11,797,786	(101,435,268)	(247,135,756)	(1.81%)	(2.55%)	0.05%	(2.55%)	0.05%	(2.55%)	0.05%
Customer Deposits												
Active	199,531,258	199,531,258	(14,946,368)		184,584,890	1.35%	2.43%	0.03%	2.43%	0.03%	2.43%	0.03%
Inactive	1,679,562	1,679,562	(125,812)		1,553,750	0.01%						
Investment Tax Credits **	86,867,569	79,210,615	(5,933,461)		73,277,153	0.54%	6.86%	0.04%	7.35%	0.04%	7.85%	0.04%
Deferred Income Taxes	2,970,902,185	2,709,031,598	(202,926,516)	(273,286,358)	2,232,818,724	16.34%						
Total	16,636,445,817	15,187,759,739	(1,137,675,605)	(388,215,061)	13,661,869,072	100.00%		5.84%		6.26%		6.69%

* Daily Weighted Average

** Cost Rates Calculated Per IRS Ruling

DUKE ENERGY FLORIDA
Average - Capital Structure
FPSC Adjusted Basis
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	System Per Books	Retail Per Books	Pro Rata Adjustments	Specific Adjustments	Adjusted Retail	Cap Ratio	<u>Low-Point</u>		<u>Mid-Point</u>		<u>High-Point</u>	
							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

DUKE ENERGY FLORIDA
End of Period - Capital Structure
FPSC Adjusted Basis
Dec-19

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DUKE ENERGY FLORIDA
FINANCIAL INTEGRITY INDICATORS
Dec-19

SCHEDULE 5

A. TIMES INTEREST EARNED WITH AFUDC

EARNINGS BEFORE INTEREST	\$ 996,355,891
AFUDC - DEBT	\$ 2,500,273
INCOME TAXES	155,380,203
TOTAL	\$ 1,154,236,367
INTEREST CHARGES (before deducting AFUDC-Debt)	\$ 306,637,803
TIE WITH AFUDC	<u>3.76</u>

B. TIMES INTEREST EARNED WITHOUT AFUDC

EARNINGS BEFORE INTEREST	\$ 996,355,891
AFUDC - EQUITY	(6,153,688)
INCOME TAXES	155,380,203
TOTAL	\$ 1,145,582,406
INTEREST CHARGES (before deducting AFUDC-Debt & CR3 reg asset carrying charge)	\$ 306,637,803
TIE WITHOUT AFUDC	<u>3.74</u>

C. PERCENT AFUDC TO NET INCOME AVAILABLE FOR COMMON SHAREHOLDERS

AFUDC DEBT	\$ 2,500,273
X (1- INCOME TAX RATE)	0.74655
SUBTOTAL	\$ 1,866,579
AFUDC -EQUITY	\$ 6,153,688
TOTAL	\$ 8,020,267
NET INCOME AVAILABLE FOR COMMON STOCKHOLDERS	\$ 691,990,904
PERCENT AFUDC TO AVAILABLE NET INCOME	<u>1.16%</u>

D. PERCENT INTERNALLY GENERATED FUNDS*

NET INCOME	\$ 691,990,904
COMMON DIVIDENDS	-
AFUDC (EQUITY)	(6,153,688)
DEPRECIATION & AMORTIZATION	815,470,830
DEFERRED INCOME TAXES	180,024,839
INVESTMENT TAX CREDITS	-
OTHER - INC NUCLEAR DECOMMISSIONING	69,641,924
OTHER FUNDS - INCLUDING CHANGE IN WORKING CAPITAL	(474,504,803)
TOTAL FUNDS PROVIDED	<u>\$ 1,276,470,006</u>

CONSTRUCTION EXPENDITURES (EXCLUDING AFUDC EQUITY & DEBT)	\$ 1,844,278,343
PERCENTAGE INTERNALLY GENERATED FUNDS *As of December 2019 (updated quarterly)	69.21%

E. SHORT TERM DEBT/LONG TERM DEBT AS A PERCENT OF TOTAL INVESTOR CAPITAL

Common Equity	\$ 5,395,705,492
Long Term Debt	\$ 5,097,992,287
Short Term Debt	\$ 182,000,632
TOTAL	<u>\$ 10,675,698,410</u>
% LONG TERM DEBT TO TOTAL	47.75%
% SHORT TERM DEBT TO TOTAL	1.70%

F. FPSC ADJUSTED AVERAGE JURISDICTIONAL AND PROFORMA RETURN ON COMMON EQUITY	Pro Forma	FPSC
FPSC AVERAGE		
EARNED RATE OF RETURN	<u>6.29%</u>	<u>6.40%</u>
LESS RETAIL WEIGHTED AVERAGE COST RATES FOR:		
LONG TERM DEBT	1.82%	1.82%
SHORT TERM DEBT	0.05%	0.05%
CUSTOMER DEPOSITS	0.03%	0.03%
DEFERRED INCOME TAXES	0.02%	0.02%
INVESTMENT TAX CREDITS		
DEFERRED INCOME TAX (FAS 109)		
SUBTOTAL	<u>1.92%</u>	<u>1.92%</u>
TOTAL	<u>4.36%</u>	<u>4.48%</u>
DIVIDED BY COMMON EQUITY RATIO	<u>41.34%</u>	<u>41.34%</u>
JURISDICTIONAL RETURN ON COMMON EQUITY	<u>10.55%</u>	<u>10.83%</u>

PUBLIC VERSION

DUKE ENERGY FLORIDA AFUDC Rate Computation Report Calculation of Jurisdictional Capital Structure Dec-19										Schedule A & B (Combined)
		13 Month Average Unadjusted Balance - System	Jurisdictional Allocation Percentage	13 Month Average Unadjusted Balance - Retail	Pro Rata FPSC Adjustments - Retail	Specific Adjustments - Retail	Adjusted Average Balance - Retail	Ratio	Cost Rate	AFUDC Weighted Average Cost of Capital
Common Equity	(1)	\$6,424,935,129	90.38%	\$5,806,769,571	(\$442,760,836)	\$31,696,756	\$5,395,705,492	41.3413%	10.50%	4.34%
Long Term Debt	(2)	\$6,106,304,323	90.38%	\$5,518,795,353	(\$420,803,067)	0	\$5,097,992,287	39.0602%	4.21%	1.64%
Short Term Debt	(3)	\$250,617,905	90.38%	\$226,505,077	(\$17,270,804)	(27,233,641)	\$182,000,632	1.3945%	3.29%	0.05%
Customer Deposits										
Active	(4)	\$199,182,384	100.00%	\$199,182,384	(\$15,187,473)	0	\$183,994,911	1.4097%	2.43%	0.03%
Inactive	(4)	\$1,973,922	100.00%	\$1,973,922	(\$150,510)	0	\$1,823,412	0.0140%	0.00%	0.00%
Investment Tax Credits	(5)	\$45,365,237	90.38%	\$41,000,488	(\$3,126,250)	0	\$37,874,239	0.2902%	0.00%	0.00%
Deferred Income Taxes	(4)	\$2,913,480,538	90.38%	\$2,633,164,350	(\$200,776,358)	(280,162,442)	\$2,152,225,550	16.4901%	0.00%	0.00%
Total		\$15,941,859,438	90.50%	\$14,427,391,145	(\$1,100,075,297)	(\$275,699,327)	\$13,051,616,521	100.00%		6.07%

Footnotes:

(1) Common Equity cost rate is mid-point authorized in Docket No. 20170183

(2) Cost rates are year end.

(3) Balances and cost rates are daily weighted average for 13 months.

(4) Balances and cost rates are 13 month average.

(5) ITC credits assigned a zero-cost rate

PUBLIC VERSION



Commercial / Industrial Service Rider (CISR) Annual Report

Date: 1/16/20

Year Represented	2019	Year to date
CISR Applications Received	0	
Number of CISR applications cancelled by customer prior to quote	0	
Number of CISR applications in process	0	
Number of CISR applications rejected	0	
Number of CISR applications accepted and prices quoted	0	
Number of CISR quotes awaiting decision by customers	0	
Number of CISR quotes rejected by customers	0	
Number of Contract Service Agreements ("CSAs") in negotiation	0	
Number of CSAs executed	0	

For all CSAs executed during the year:

Customer	Description / Justification	Rates & Charges	Contract Period

PUBLIC VERSION

DUKE ENERGY FLORIDA
Summary of Osprey 2019 Outage O&M and Deferral Amortization

	Actual Costs
Osprey 2019 Outage O&M	1,235,295
Osprey Outage Deferral Amortization*	<u>3,500,000</u>
Net 2019 O&M Costs	4,735,295

* Per Order No. PSC-2016-0521-TRF-EI, the outage deferral balance was fully amortized by the end of 2019.