City of Dover
Utility Committee Meeting

Review of
DRAFT Request for Proposal
Policy and Process

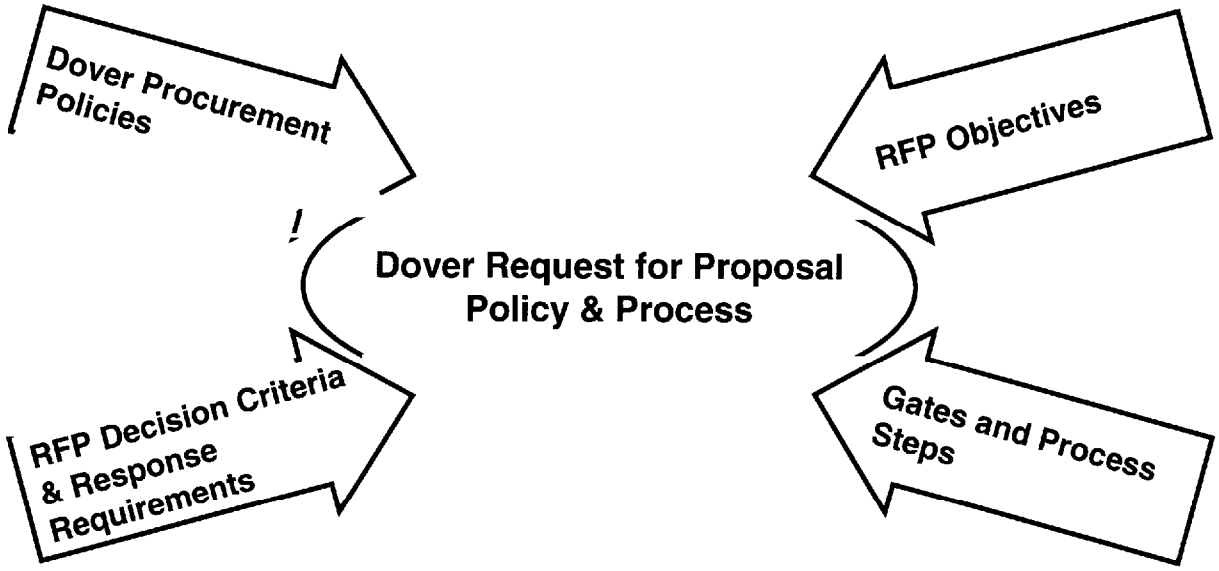
January 28, 2008

PACE

Review of Last Discussion with Utility Committee

- Pace as a member of the Dover Energy Plan 2030 Committee presented to the Utility Committee a status update
  - Current shortfall between Dover's electricity needs and its generation capabilities (capacity and energy)
  - The potential for a growing deficit in energy capacity
  - The constraints on supply in the Delmarva peninsula
  - Dover's options for future electric capacity & energy supplies
    - The buy option
    - The build option
    - The conservation option (demand side management)
- Next step was to present an RFP process which allows us to explore the various options.

Reasons for Defining a Customized Process



Clearly communicating the process within the context of the Dover Procurement Policies will improve the effectiveness and efficiency of the process

RFP Objectives & Design

Effectively evaluate and potentially select a proposal

- Reliable, cost competitive and environmentally prudent energy
- Generation-based proposals that may include but are not limited to
  - Electrical capacity and energy options
  - Options for equity investment and owner participation
  - Value for Dover's contributions to a project
  - Conventional and renewable supply sources
- Infrastructure development that will support economic development



Design Criteria

- Access specialized market expertise
- Conduct a fair and competitive process
- Create a transparent process fostering clarity and ease of assessment
- Define and facilitate an efficient process

RFP Process Gates and Key Objectives

2 to 3 Months | **3 to 4 Months** | **6 to 12 Months**

Request for Qualifications → **3-4 Qualified Bidders**

- Advertise
- Review Qualification Packages including Concept
- Develop list of "Qualified Bidders"

→ **Request for Proposals** → **Short List 1-2 or Compete**

- Review indicative proposals
- Utilize open book process to perform due diligence
- Select one or more parties to proceed with pre-development work

→ **Pre-development: Creating binding terms**

- Collaboratively develop firm and binding proposals

Decision

- **Ratify a contract, or**
- **Re open RFP, or**
- **Cancel RFP**

RFP Governance & Management

City Council

- **Final decision making authority**
- **Approves RFP policies and process**
- **Power to halt process at any time**

Steering Committee

- **Provides governance for all Phases**
- **Phase I: Selects participants for Phase II**
- **Phase II: Reviews proposals and makes selection(s) to Phase III**
- **Phase III:**
  - **Negotiates contractual terms**
  - **Makes recommendation to City Council through the Utility Committee**

Outside Consultant

- **Day-to-day process management**
- **Provide logistics support to Steering Committee**
- **Conduct analyses and provide recommendations to Steering Committee**

RFP Process: Key Activities

Request for Qualifications

- Develop & manage submission process
- Develop ranking methodology
- Develop & submit advertising material
- Manage submissions
- Create initial ranking of submissions
- Utilize steering committee structure to test rankings
- Develop final rankings based on Steering Committee input

Request for Proposals

- Develop RFP
- Manage submission process
- Conduct bidders meeting
- Conduct first round technical/ engineering assessment (up to 7 proposals)
- Conduct first round project financial analysis
- Conduct bidder one-on-ones
- Develop recommendation to Steering Committee
- Round 2 analyses: engineering. Financial and other due diligence
- Develop final recommendation
- Create presentation for City Council

Pre-development: Creating binding terms

- Scope of work highly dependent on multiple factors:
  - Dover's economic participation
  - Structure of a PPA
  - Type of technology
  - Interconnects and potential upgrades for fuel, transmission and water
  - Requirements for performance guarantees

- Maintain communications with Council through the Utility Committee
- Conduct public process

DRAFT – DRAFT – DRAFT – DRAFT - DRAFT

Chapter 110 – Utilities, Article II – Electric Service, Section 110-32 – Pole Attachment Fee

Use of Dover Electric Department Facilities

1. Purpose

The purpose of this Section is to establish uniform policies for usage of Facilities of the City of Dover's Electric Department ("DED") to enable the City to:

(a) Permit fair, reasonable and non-discriminatory access to the available capacity on DED Facilities;

(b) Safeguard the reliability and integrity of the DED's Facilities and systems;

(c) Obtain fair compensation for the cost to use of DED Facilities through collection of usage and other charges;

(d) Comply with all applicable federal, state and local laws, rules, regulations, Sections, standards and policies, including the National Electrical Code, the National Electrical Safety Code and any applicable standards of the City of Dover and the DED;

(e) Avoid the congestion, inconvenience, cost, visual impacts, and other adverse effects on the City's street, highways and rights-of-ways that could result from the construction, operation and maintenance of redundant infrastructure.

2. Application

It shall be unlawful for any person, Company, City of Dover employee, or an employee of a contractor engaged by the City of Dover, to make an Attachment to or within DED Facilities without a valid, existing Pole, Duct, or Conduit License Agreement. This License Agreement will be codified by the execution of Appendix D of this ordinance, which shall be executed within the time frame outlined in Section 5, (i) and herein may be referred to as License Agreement or Agreement. All new or renewed Pole, Duct or Conduit License Agreements with the DED shall be adopted pursuant to this Chapter. The provisions of this Chapter shall be deemed incorporated in each such Agreement and shall be limited in scope or application only to the extent agreed by the parties or required by applicable federal or Delaware law. Notwithstanding the foregoing, DED may at its option enter into a Joint Use Agreement with another utility that owns or controls poles that are utilized by DED; in such instance the terms of such Joint Use Agreement may vary from the specifications of this Section to the extent reasonable to reflect the reciprocal nature of the Joint Use Agreement.

3. Definitions

For the purpose of this Section and any Pole, Duct, or Conduit License Agreement adopted pursuant to it, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific paragraph of this Section or the Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) Affiliate: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

(b) Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around electric facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Section and in each Agreement, and/or other reasonable safety and engineering requirements of the DED or other federal, state or local authority with jurisdiction over DED Facilities.

(c) Assigned Space: means space on DED's Poles or within DED's' Conduit System that is being or can be used, as defined by the Applicable Standards, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service.

(d) Attaching Entity: means any public or private entity, including Licensee, that places an Attachment on DED's Poles or within its Conduit System, in accordance with a License Agreement.

(e) Attachment: means a Communications Facility that is affixed directly to a DED Pole or is placed within DED Conduit, but does not include a service drop attached to a single Pole on which the Licensee has an existing Attachment. Overlashing is a permitted attachment; however, no additional attachment fees will be assessed for a Licensee overlashing their own facilities for their own service. Make ready fees apply should pole loading dictate pole upgrades.

(f) Capacity: means the ability of a Pole or portion of Conduit to accommodate an Attachment in accordance with Applicable Standards, including space and loading considerations.

(g) Climbing Space: means that portion of a Pole's surface and surrounding space that is free of obstructions to the ability of DED employees and contractors to safely and conveniently climb, gain access to, and work on, DED Facilities.

(h) Common Space: means space on DED's Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure.

(i) Communications Facility: means any wire or cable that is being used, or can be used, to provide Communications Service, and any and all associated equipment.

(j) Communications Service: means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over a Communications Facility, but does not include any such transmission or receipt by DED when utilized to provide internal, non-commercial communications related to the operation of the DED or non-commercial governmental communications.

(k) Conduit System or Conduit: means DED's Conduit, Innerduct, manholes, vaults, risers, pull-boxes and trenches.

(l) Electric Facility: means a transformer or electric wire utilized to provide Electric Service, together with all associated equipment necessary to physically attach such facilities to a Pole or within a Conduit.

(m) Electric Service: means the distribution or transmission of electricity over Electric Facilities.

(n) Licensee: means a duly authorized Attaching Entity, its Affiliates, successors and assignees.

(o) Licensee Facilities: any wire, cable, facility, or apparatus for the transmission writing, signs, signals, pictures, sounds, voice, or other forms of intelligence.

(p) Make-Ready Work: means all work, as reasonably determined by DED, required to accommodate a Licensee's Communications Facilities to ensure compliance with Applicable Standards. Such work includes, but is not limited to, replacement or construction of Poles or Conduits; rearrangement and/or transfer of DED Facilities or existing Attachments; and associated inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes).

(q) Overlash: means to place an additional wire or cable onto an existing wire or cable.

(r) Permit: means written or electronic authorization of DED for a Licensee to make or maintain Attachments to specific DED Poles or portions of Conduit pursuant to the requirements of this Section and any applicable Agreement.

(s) Pole: means a pole owned by DED that is used for the distribution of electricity or Communications Service and is capable of supporting Attachments for Communications Facilities.

(t) Post-Construction Inspection: means an examination by DED or its contractor(s) to verify that Attachments have been made in accordance with Applicable Standards and a Licensee's Permit(s).

(u) Pre-Construction Survey: means all work or operations required by Applicable Standards and/or DED to determine the potential Make-Ready Work necessary to accommodate a Licensee's Communications Facilities on a Pole or within a portion of Conduit. Such work includes, but is not limited to, field inspection and administrative processing.

(v) DED Facilities: means all personal property and real property owned or controlled by DED, including Poles and Conduits.

(w) Reserved Capacity: means capacity or space on a Pole or within a portion of Conduit System that DED has identified and reserved for its own utility requirements, including internal communications capabilities, pursuant to a reasonable projected need.

(x) Substantial Construction or Modification: means construction activity on a Pole that will have an appreciable impact on loading and/or tension and does not include routine maintenance activities.

(y) Tag: means to place distinct markers on wires and cables, coded by color or other means specified by DED and/or applicable federal, state or local regulations that will readily identify its owner.

4. Scope of Authority

(a) Grant of License. Subject to terms and conditions required or authorized by this Section, DED shall grant any qualified applicant a revocable, nonexclusive license to attach Communications Facilities to DED's Poles or to place Communications Facilities within DED's Conduits.

(b) Incorporation into License Agreements. Except as DED and a Licensee may otherwise agree, the provisions of this Section shall be deemed incorporated into DED's future License Agreements.

(c) Right to use DED Facilities not granted by franchise. The rights of a person to apply for or use DED Facilities shall be governed by this Section and its applicable License Agreement. The grant of a cable franchise shall not be construed as a grant of attachment rights or authority to use DED Facilities without additional compliance by the franchisee with the provisions of this Section and any applicable License Agreement(s).

(d) Permit Issuance Conditions. DED will issue a Permit to a Licensee only when DED determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s); (ii) the Licensee meets all requirements set forth in this Section and any applicable License Agreement, and (iii) such Permit complies with all Applicable Standards.

(e) Reserved Capacity. DED will grant access to Assigned Space on its Poles to Licensee with the understanding that certain Poles may be subject to reserve Capacity for future electric service use. At the time of permit issuance DED may notify the Licensee that capacity on particular poles is being reserved for future electric use within the next five years pursuant to a bona fide development plan. For Attachments made with notice of such a bona fide plan, on giving Licensee at least one hundred and twenty (120) calendar days prior notice, DED may reclaim such reserved Capacity at anytime during the five year period following the installation of Licensee's Attachment if required for DED's future electric service use, including the attachment of communications lines for internal DED operational or governmental communications requirements. DED shall give a Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Section 5, f.

(f) No Interest in Property. No use, however lengthy, of any DED Facilities, and no payment of any fees or charges required under this Section or an applicable License Agreement, shall create or vest in a Licensee any easement or other ownership or property right of any nature in any portion of such DED Facilities. Neither a License Agreement nor any Permit granted to a Licensee shall constitute an assignment of any of DED's rights to the DED Facilities. Notwithstanding anything in an Agreement to the contrary, a Licensee shall, at all times, be and remain a licensee only.

(g) Licensee's Right to Attach. Nothing in this Section or any associated License Agreement, other than a Permit issued pursuant to Section 8, shall be construed as granting a Licensee a right to attach its Communications Facilities or Electric Facilities to any specific Pole or any portion of Conduit. DED shall not be required to grant a Permit to a Licensee unless and until the Licensee meets all applicable terms and conditions for the receipt of the Permit.

(h) DED's Rights over Poles. This Section does not in any way limit DED's right to locate, operate and maintain its Poles and Conduits in the manner that will best enable it to fulfill its service requirements.

(i) Expansion of Capacity. DED will take reasonable steps to expand Pole or Conduit Capacity when necessary to accommodate a Licensee's request for Attachment. Notwithstanding the foregoing, nothing in this Section shall be construed to require DED to install, retain, extend, or maintain any Pole or portion of Conduit for Licensee's use when DED does not need such Pole or Conduit for its own service requirements.

(j) Prior Agreements. Except as provided in this Chapter, nothing herein shall limit, restrict, or prohibit DED from fulfilling any agreement or arrangement regarding Poles or Conduit into which DED has previously entered.

(k) Permitted Uses. Any Agreement adopted pursuant to this Section shall be limited to the uses specifically stated in the Agreement and no other use shall be allowed without DED's express written consent to such use. Nothing in Section shall be construed to require DED to allow a Licensee to use DED's Facilities after the termination of the applicable Agreement.

(l) Overlashing. The following provisions will apply to Overlashing:

i. Overlashing is subject to the permitting requirements of Section 8. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3.

ii. Overlashing performed by or behalf of the Licensee or its Affiliate shall not increase the Annual Attachment Fee paid by the Licensee pursuant to Appendix A, Item 1. Licensee or its Affiliate, however, shall be responsible for all Make-Ready Work and other charges associated with the

Overlashing but shall not be required to pay a separate Annual Attachment Fee for such Overlashed Attachment.

iii. If Overlashing is required to accommodate facilities of a third party that is not affiliated with Attaching Utility, such third party must enter into a License Agreement with DED and obtain Permits and must pay a separate Attachment Fee (Appendix A, Item 1), as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such Permits to third parties shall be granted by DED allowing Overlashing of Licensee's Attachments unless Licensee has consented in writing to such Overlashing. Overlashing shall not increase the fees and charges paid by Licensee pursuant to Appendix A, Item 1. Nothing in this Section or applicable Agreement shall prevent a Licensee from seeking a contribution from an Overlashing third party to defray fees and charges paid by the Licensee.

iv. Make-Ready Work procedures set forth in Section 5, f shall apply, as necessary, to all Overlashing.

5. Fees and Charges

(a) Payment of Fees and Charges. Each Licensee shall pay to DED the fees and charges specified in Appendix A and shall comply with the terms and conditions specified therein.

(b) Payment Period. Fees shall be calculated and payable on a pro rata basis for the potion of the year during which an Attaching Entity holds a Permit for such Attachment.

(c) Billing. DED shall invoice Licensee for the payments annually. DED will submit to the Licensee an invoice for the annual rental period no later than July 1, of each year. The initial annual rental period shall commence upon the execution of an Agreement and conclude on June 30 of the next year, and each subsequent annual rental period shall commence on the following July 1 and conclude on June 30 of the subsequent year. The invoice shall set forth the total number of DED's Poles and/or linear feet of Conduit for which the Licensee was issued and/or holds a Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. Each Licensee shall pay each such invoice within thirty (30) calendar days after DED's issuance thereof.

(d) Refunds. No fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted pursuant to a License Agreement.

(e) Late Charge. If the DED does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, the Licensee shall pay interest to DED, at the rate of one and one-half percent (1 1/2%) per month, on the amount due.

(f) Payment for Make-Ready Work. Each Licensee will be responsible for payment to DED for all Make-Ready Work required to accommodate Attachments (including Overlashes) by Licensee or an Affiliate. Each third party shall be responsible for payment to DED for all Make-Ready Work required to accommodate its Overlashes.

(g) Advance Payment. At the discretion of DED, a Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Attachments pursuant to the procedures set forth below.

(h) Determination of Charges. Wherever this Chapter or an associated License Agreement requires a Licensee to pay for work done or contracted by DED, the charge for such work shall include all reasonable material, labor, engineering, administrative and overhead costs that are not otherwise recovered in the annual attachment fee. DED's invoices shall be based upon actual costs, and such costs will be determined in accordance with DED's cost accounting systems used for recording capital and

expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials.

(i) Inventory. Upon enactment of this ordinance, the DED shall provide an inventory of the poles to each Licensee. DED will proved this inventory list within fifteen (15) calendar days to the Licensee, the Licensee shall respond with any discrepancies to DED within sixty (60) calendar days and these will be mutually resolved within fifteen (15) days. A failure of the Licensee to respond within the sixty (60) days or resolve the discrepancy within fifteen days shall constitute acceptance of the DED inventory. For any disputed attachments, the Licensee shall provide definitive proof that they are not attaching to the DED facilities, for example pictures or other video media.

A joint inventory of all Attachments shall be made no less than once every five (5) years nor earlier than every four (4) years by DED and all Licensees, unless all parties agree to a new inventory schedule. The cost of the inventory shall be shared pro rata between DED and the Licensees based on the number of attachments (not including overlash) subject to the inventory and to the terms of any agreement with said Licensees. The cost of the inventory shall be shared by all attaching parties, based upon the gross number of pole attachments as discovered at the end of the inventory. DED is assumed to have one attachment per pole. For example, the Electric Utility has 100 poles, Cable Company has 50 attachments, Telephone Company has 25 attachments – this is a total of 175 attachments – the cost of the inventory would be divided by 175 then multiplied by 100 for the Electric Utility, 50 for the Cable Company and 25 for the Telephone Company. At the expiration of five (5) years from the completion of any inventory, Licensee or DED may request an inventory of attachments, in writing, at least six months prior to the end of the calendar year preceding the year the inventory is to commence. Licensee will be required to provide documentation indicating the year of attachment for any of Licensee's Attachments on DED's Poles not recorded at the time of the previous inventory.

(j) Work Performed by DED. Wherever this Section or an associated License Agreement requires DED to perform any work, Licensee acknowledges and agrees that DED, at its sole discretion, may utilize its own qualified employees, contractors approved by a Licensee, or any combination of the two to perform such work.

(k) "True Up". Wherever the actual cost of DED's activity exceeds the advance payment of estimated expenses, Licensee agrees to pay DED for the difference in cost when that amount exceeds fifty dollars ($50.00). To the extent that the actual cost of the activity is less than the estimated cost, DED shall refund to Licensee the difference in cost where that amount exceeds fifty dollars ($50.00).

(l) Default for Nonpayment. Nonpayment of any undisputed amount due under this Section or an associated License Agreement beyond ninety (90) days shall constitute a default of this Section or the License Agreement.

6. Specifications

(a) Installation/Maintenance of Facilities. When a Permit is issued pursuant to an Agreement, the Licensee's Facilities shall be installed and maintained in accordance with DED's requirements and specifications. All of a Licensee's Attachments must comply with all Applicable Standards. Each Licensee shall be responsible for the installation and maintenance of its Attachments. Each Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards.

(b) Tagging. Licensee shall Tag all of its Communications Facilities as specified in by DED and/or applicable federal, state and local regulations upon installation of such Facilities. Previously authorized Attachments of a Licensee shall be tagged within one year of the execution of a new Agreement, unless written permission is granted by the Public Utilities Director to extend this deadline. Failure to provide proper tagging will be considered a violation of the Specifications of this Section.

(c) Interference. No Licensee shall allow its Communications Facilities to impair the ability of DED or any third party to use DED's Facilities, nor shall Licensee allow its Attachments to interfere with the operation of any DED Facilities.

(d) Protective Equipment. Each Licensee and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Attachments in the event of a contact with Electric Facilities.

(e) Violation of Specifications. If a Licensee's Communications Facilities or Electric Facilities, or any part of them, are installed, used, or maintained in violation of this Section or an associated License Agreement, and said Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from DED, DED at its option, may correct said conditions. Where the violation is not reasonably capable of being cured within 30 days, the parties shall in good faith negotiate for a longer period as needed, provided that Licensee has commenced repairs within 30 days DED will attempt to notify Licensee in writing prior to performing such work whenever practicable. When DED believes, however, that such violation(s) pose an immediate threat to the safety of any person or property, will interfere with the performance of DED's service obligations, or will pose an immediate threat to the physical integrity of DED Facilities, DED may perform such work and/or take such action as it deems necessary without first giving written notice to the Licensee. As soon as practicable thereafter, DED will advise the Licensee of the work performed or the action taken. The Licensee shall be responsible for all actual and reasonable costs incurred by the DED in taking action pursuant to this subsection.

(f) Restoration of DED Service. DED's service restoration requirements shall take precedence over any and all work operations of a Licensee on DED's Poles or within its Conduits.

(g) Effect of Failure to Exercise Access Rights. If a Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within ninety (90) calendar days of the effective date of such right and any extension thereof, which shall not be unreasonably denied, DED may use the space scheduled for the Licensee's Attachment(s), for its own needs and/or other Attaching Entities. In such instances, DED shall endeavor to make other space available to Licensee, upon written application, as soon as reasonably possible and subject to all requirements of this Section or applicable Agreement, including the Make-Ready Work provisions. For purposes of this paragraph, any right shall not be deemed effective until any necessary make ready work is performed.

7. Private and Regulatory Compliance

(a) Necessary Authorizations. DED grants Licensees a nondiscriminatory access to Poles, Conduits and associated public and private rights of way where BVU has the right to authorize the occupancy of Licensee's facilities. Before making any Attachments to DED's Poles or Conduits, a Licensee must obtain all necessary authorizations from federal, state, and local authorities and all required easements or other permissions from owners of affected private property. DED retains the right to require evidence that Licensee has obtained all such consents. A Licensee shall defend, indemnify and reimburse DED for all loss and expense, including reasonable attorneys' fees, that DED may incur as a result of claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to place its Attachments on or within DED's Facilities.

(b) Lawful Purpose and Use. A Licensee's Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.

(c) DED's Rights. No License Agreement or Permit granted pursuant to this Section shall extend to any DED Facilities on which the Attachment of Licensee's Communications Facilities would result in impairment or forfeiture of DED's rights. Any License or Permit that would result in impairment or forfeiture of DED's rights is void. If any of a Licensee's Attachments, whether or not installed pursuant to

a valid License Agreement or Permit, would cause such impairment or forfeiture, Licensee shall promptly remove its Facilities upon receipt of written notice from DED. Notwithstanding the forgoing, a Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that the Licensee shall indemnify DED for any actual damages that may result during Licensee's challenge. Should Licensee fail to remove its Attachments within thirty (30) calendar days of receiving written notice from DED, DED shall have the right to perform such removal at the Licensee's expense.

(d) Effect of Consent to Construction/Maintenance. DED's consent to a Licensee's construction or maintenance of specified Attachments shall not be deemed consent to the Licensee's construction or maintenance of any other Attachments. It is a Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

8. Permitting

(a) Permit Required. A Licensee shall not install any new Attachments, Overlash existing Attachments or perform Substantial Construction or Modification on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B. No Permit shall be required for prior existing authorized Attachments, Overlashing or Service Drops. No Permit shall be required for routine maintenance or installing Service Drops from existing Poles. Attachments to or rights to occupy DED Facilities not covered by this Section and an associated License Agreement must be separately negotiated.

(b) Permits for Overlashing. As prescribed in Section 4, Permits are required for any Overlashing allowed under this Section and an associated License Agreement and the Licensee or third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

(i) The requirements of this ordinance not withstanding, a license may overlash without a permit when an emergency or urgent business matter exists. In such situations, the license shall submit an application for a permit within ten business days of the initial start date of such overlashing.

(c) DED Review of Permit Application. Upon receipt of a properly executed Application for Permit (Appendix C), including the Pre-Permit Survey, DED will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. DED's acceptance of the submitted design documents does not relieve the Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

(i) Review Period. DED shall review and respond to "Minor" Permit Applications – less then ten (10) Attachments/Poles – within thirty (30) days of receipt. DED shall review and respond to "Major" Permit Applications – ten (10) or more Attachments/Poles – within forty-five (45) days of receipt.

(ii) Expedited Review. In instances where a Licensee notifies DED of an immediate need to make new Attachments, Overlash existing Attachments or perform Substantial Construction or Modification on a Pole, and provides information as to the need for an expedited review process, DED shall make its best reasonable efforts to review and respond to Permit Applications within fifteen (15) days of receipt. DED reserves the rights to charge a Licensee for any overtime or other applicable costs that it incurs in meeting a request for an expedited review.

(d) Performance of Make-Ready Work. If Make-Ready Work is required to accommodate a Licensee's Attachments, DED or its contractors shall perform such work pursuant to Section 9.

(e) Permit as Authorization to Attach. After receipt of payment for any necessary Make-Ready Work, DED will sign and return the Permit application, which shall serve as authorization for the Licensee to make its Attachment(s).

9. Make-Ready Work

(a) Estimate for Make-Ready Work. In the event DED determines that it can not accommodate a request for Attachment(s), including Overlashing of an existing Attachment, it will, upon request, advise the applicant of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

(b) Payment of Make-Ready Work. Unless otherwise agreed, DED may require payment in advance for all Make-Ready Work based upon the estimated cost of such work if the estimate exceeds $1,000.00. Upon completion, Licensee shall pay DED's actual cost of Make-Ready Work. The costs of which shall be itemized.

(c) Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by DED and/or a contractor authorized by DED to perform such work. If DED cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within seventy-five (75) calendar days of Licensee's request for Attachments, Licensee may notify DED in writing of its intent to employ a qualified contractor to perform such work, and shall specify when such work shall be performed. In all instances all "qualified contractors" must be pre-approved by DED for such work on an annual basis.

(d) Scheduling Make-Ready Work. In performing all Make-Ready Work, DED will endeavor to include such work in its normal work schedule. If an applicant requests that the Make-Ready Work be performed on a priority basis or outside of DED's normal work hours, the applicant shall pay any resulting increased costs. Nothing herein shall be construed to require DED to perform such Make-Ready Work before other scheduled or emergency work.

(e) Written Approval of Installation Plans Required. Before commencing any installation of its Communications Facilities on DED's Poles, including Overlashing of existing Attachments, Licensee shall provide a copy of Licensee's plans for installation, which shall accompany the Permit application, including the name of the party (Licensee and/or contractor) performing such work and the approximate date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of this Section.

(f) Licensee's Installation/Removal/Maintenance Work.

1. Licensee shall perform all installation, removal, and maintenance work at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of DED's Poles or Facilities or any other Attaching Entity's facilities or equipment attached thereto.

2. All of Licensee's installation, removal, and maintenance work performed on DED's Poles or near or in other DED Facilities, either by its employees or contractors, shall comply with all applicable regulations specified in this Section and applicable Agreement. Each Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards.

10. Transfers

(a) Required Transfers of Licensee's Communications Facilities. If DED reasonably determines that a transfer of Licensee's Communications Facilities is necessary, Licensee agrees to make such transfer. License shall transfer its facilities within thirty (30) days of notice from DED. If Licensee fails to transfer its Facilities within thirty (30) calendar days after receiving such notice from DED, DED shall have the right to transfer Licensee's Facilities using its personnel and/or contractors at Licensee's expense. DED shall not be liable for damage to Licensee's Facilities except to the extent provided in Section 18, Paragraph A.

(b) Billing for Transfers Performed by DED. If DED performs the transfer(s), DED will bill Licensee for actual costs per Section 5. Licensee shall reimburse DED within thirty (30) calendar days of the receipt of the invoice.

11. Modifications or Replacements

(a) Licensee's Action Requiring Modification/Replacement. If any Pole or Conduit to which a Licensee desires to make Attachment(s) is unable to support or accommodate the requested Attachment(s) in accordance with Applicable Specifications, DED will notify the Licensee whether, and if so, at what cost, DED's Poles or Conduits can be modified or replaced to accommodate the additional Attachment(s). If Licensee elects to go forward with such modifications or replacements, it shall pay to DED the actual cost of the Make-Ready Work performed by DED. DED may, at its discretion, require advance payment. Licensee shall also be responsible for obtaining and furnishing to DED before the commencement of any Make-Ready Work, agreements between the Licensee and the other Attaching Entities (including Overlashers) concerning the relocation or rearrangement of their Attachments and the costs involved.

(b) Treatment of Multiple Requests. If DED receives Permit applications for the same Pole or Conduit from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole or Conduit, DED will allocate among such persons or entities the applicable costs associated with such modification or replacement.

(c) Guying. The use of guying to accommodate a Licensee's Attachments shall be provided by and at the expense of the Licensee and to the satisfaction of DED as specified in the License Agreement or associated appendices. A Licensee shall not attach its guy wires to DED's anchors without prior written permission of the DED. If permission is granted, charges may apply.

(d) Allocation of Costs. The costs for any rearrangement or transfer of a Licensee's Attachments or the modification or replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of DED's cables or wires) or Conduit shall be allocated to DED and/or the Licensee and/or other Attaching Entities on the following basis:

(1) If DED intends to modify or replace a Pole or Conduit solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole or Conduit. The Licensee(s), however, shall be responsible for all costs associated with the rearrangement or transfer of Licensee's Attachments. Prior to making any such modification or replacement DED shall provide the Licensee(s) written notification of its intent in order to allow the Licensee(s) a reasonable opportunity to elect to modify or add to its existing Attachment(s). Should the Licensee so elect, it must seek DED's written permission. The notification requirement of this subparagraph d. shall not apply to routine maintenance or emergency situations. If a Licensee elects to add to or modify its Attachments, the Licensee shall bear the total incremental costs incurred by DED in making the space on the Poles or Conduits accessible to the Licensee.

(2) If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than DED or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring the Licensee's Attachments. Each Licensee shall cooperate with such third party Attaching Entity to determine the costs of moving the Licensee's facilities.

(3) If a Pole or Conduit must be modified or replaced for other reasons unrelated to the use of the Pole or Conduit by any Attaching Entities (e.g., storm, accident, deterioration), DED shall pay the

costs of such modification or replacement; provided however, that every Licensee shall be responsible for the costs of rearranging or transferring its own Attachments.

(e) Nondiscrimination. No provision of this Agreement shall be construed to require DED to relocate its Attachments or modify/replace its Poles or Conduits for the benefit of a particular Licensee; *provided, however*, any denial by DED shall be based on nondiscriminatory standards of general applicability.

12. Abandonment or Removal of DED Facilities

(a) Notice of Abandonment or Removal of DED Facilities. If DED desires at any time to abandon or remove any of its Poles or other Facilities to which a Licensee's Facilities are attached, it shall give the Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such Facilities. Notice may be limited to thirty (30) calendar days if DED is required to remove or abandon its Facilities as the result of the action of a third party and a greater notice period is not practical. Such notice shall indicate whether DED is offering the Licensee Utility an option to purchase the Pole(s). If, following the expiration of said period, Licensee has not yet removed and/or transferred all of its Facilities and has not entered into an agreement to purchase DED's Poles or other Facilities pursuant to Paragraph B of this Section 12, DED shall have the right, subject to any applicable laws and regulations, to have the Licensee's Facilities removed and/or transferred from the Pole at the Licensee's expense. DED shall give a Licensee sixty (60) days prior written notice of any such removal or transfer of Licensee's Facilities.

(b) Option to Purchase Abandoned Poles. Should DED desire to abandon any Pole, DED, in its sole discretion, may grant a Licensee the option of purchasing such Pole at a rate equal to the depreciated value of said pole. The depreciation life of a Pole is 30 years. If a Pole that is to be purchased is older than 30 years, then the rate to be charged is set at $50 per pole. A Licensee must notify DED in writing within thirty (30) calendar days of the date of DED's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within sixty (60) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should DED and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the sixty (60) calendar days, Licensee must remove its Attachments as required under Paragraph A of this Section.

13. Removal of Licensee's Attachments

Removal on Termination. At the termination of an Agreement, Licensee shall remove its Attachments from the affected DED Facilities at its own expense. If a Licensee fails to remove such Attachments within one hundred and eighty (180) calendar days of termination or some greater period approved by DED, DED shall have the right to remove or cause such facilities to be removed at the Licensee's expense.

14. Termination of Permit

(a) Automatic Termination of Permit. Any Permit issued pursuant to a License Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Communications Facilities on public or private property at the location of the particular Poles or Conduits covered by the Permit. Notwithstanding the forgoing, a Licensee shall have the right to contest any such expiration or denial of authority before any of its rights are terminated under the Agreement provided that the Licensee shall indemnify DED for any actual damages that may result during Licensee's challenge.

(b) Surrender of Permit. A Licensee may at any time surrender a Permit and remove its Attachments. Before commencing any such removal, the Licensee must provide DED with written notice of Licensee's plans for removal; including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of this Section. No refund of any fees or costs will be made upon removal. If a Licensee surrenders a Permit but

fails to remove its Attachments from DED's Facilities within thirty (30) calendar days after the surrender, DED shall have the right to cause removal of Licensee's Attachments at Licensee's expense.

15. Inspection of Licensee's Facilities

(a) Inspection. DED shall have the right at any time to make periodic inspections of a Licensee's Facilities, utilizing its employees and/or contractors at the sole expense of DED, unless prior agreement has been reached between DED, and Licensee(s).

(b) Notice. DED shall give a Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

(c) Duty of Full Compliance. Each Licensee shall to bring its Attachments into full compliance with this Section and any applicable Agreement within thirty (30) calendar days of receipt of written notice in the event that any inspection results in a finding by DED that the Licensee is not in compliance with this Section or applicable Agreement. Licensees shall be responsible for the costs of bringing Attachments into compliance unless it can demonstrate that the non-compliance is the result of DED or a third-party attaching entity and not the result of the Licensee's actions.

(d) No Liability. The making of any inspections under this Section 15, or the failure to do so, shall not operate to impose upon DED any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

16. Unauthorized Occupancy or Access

(a) Penalty Fee. If any Attachments are found occupying DED Facilities for which no Permit has been issued (unless specifically exempted under Section 8) and such unauthorized attachment occurred after the effective date of this ordinance, DED, without prejudice to any other rights it may have, may assess an Unauthorized Access Penalty Fee as specified in Appendix A. In the event a Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification thereof, DED has the right to remove such Attachments at Licensee's expense, unless such fee is disputed in good faith.

(b) Service Drop Exclusion. Service Drops on DED's poles will not be considered Unauthorized Attachments when discovered.

(c) No Ratification of Unlicensed Use. No act or failure to act by DED with regard to any unlicensed use shall be deemed to be a ratification of the unlicensed use. If a Permit should subsequently be issued, such Permit shall not, unless it expressly states otherwise, operate retroactively or constitute a waiver of any of DED's rights or privileges.

17. Advance Payment

At its sole discretion, DED shall have the right to demand that a Licensee make an Advance Payment for each Attachment in the amount of the Annual Attachment Fee as specified in Appendix A, plus any estimated Make-Ready Work expenses.

18. Liability and Indemnification

(a) Liability. DED reserves to itself the right to maintain and operate its Facilities in such manner as will best enable it to fulfill its service requirements. A Licensee's use of DED's Facilities is at the Licensee's sole risk. Notwithstanding the foregoing, DED shall exercise reasonable precaution to avoid damaging the Communications Facilities or Electric Facilities of Licensees and shall report to Licensee any such damage caused by DED's employees, agents or contractors. DED shall reimburse a Licensee for all reasonable costs incurred by Licensee for the physical repair of facilities damaged by the gross negligence

or willful misconduct of DED; *provided, however*, that the aggregate liability of DED to a Licensee in any fiscal year, for any fines, penalties, claims or damages (including special, indirect, punitive, or consequential damages) stemming from interruption of Licensee's service or from DED's interference with the operation of Licensee's Communications Facilities or Electric Facilities, shall not exceed the total Annual Attachment Fee paid by the Licensee to DED for that year, as calculated based on the number of Attachments under Permit at the time of the damage.

(b) Indemnification. Every Licensee (including but not limited to its agents, contractors and subcontractors) shall defend, indemnify and hold DED (including but not limited to its officials, officers, board members, council members, commissioners, representatives, employees, agents, contractors and subcontractors) harmless from any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by DED under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including DED's reasonable attorney fees and other expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, transfer, removal or operation by the Licensee, or by Licensee's officers, directors, employees, agents, and contractors, of Licensee's Communications Facilities or Electric Facilities, except to the extent that DED's gross negligence or willful misconduct gave rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

(1) Infringement of intellectual property, libel and slander, trespass, and unauthorized use of television or radio broadcast programs and other program material;

(2) Cost of work performed by DED that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents, or contractors, to install, maintain, present, use, transfer or remove Licensee's Attachments in accordance with the requirements and specifications of this Section or an associated License Agreement, or from any other work this Section or an associate License Agreement authorizes DED to perform on Licensee's behalf;

(3) Damage to property, injury, or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents, and contractors, pursuant to this Section or associated Agreement;

(4) Liabilities incurred as a result of a violation by a Licensee or its officers, directors, employees, agents, contractors and subcontractors, of any law, rule, or regulation of the United States, State of Dover or any other governmental entity or administrative agency.

(c) Procedure for Indemnification.

(1) DED shall promptly give a Licensee notice of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against DED, DED shall endeavor to give notice to Licensee no later than ten (10) calendar days after DED receives written notice of the action, suit or proceeding.

(2) DED's failure to give the required notice within ten (10) calendar days shall not relieve the Licensee of its obligation to indemnify DED unless the Licensee is materially prejudiced by such failure.

(3) A Licensee shall have the right at any time, by notice to DED, to participate in or assume control of the defense of the claim. The Licensee may utilize counsel of its choice subject to DED's approval, which DED shall not unreasonably withhold. DED shall cooperate fully with the Licensee. If the Licensee assumes control of the defense of any third-party claim, DED shall have the right to participate in the defense at its own expense. If the Licensee does not assume control or otherwise participate in the defense of a third-party claim, it shall be bound by the results obtained by DED.

(4) If a Licensee assumes the defense of a third-party claim as described above, DED shall not assume liability for or settle, compromise or discharge any third-party claim without the Licensee's prior written consent, and DED will agree to any settlement, compromise or discharge of any third-party claim recommended by the Licensee that releases the DED completely from such claim and does not establish a precedent that may adversely affect DED in the future.

(d) Environmental Hazards. As a condition to a Licensee's use of DED's Facilities, the Licensee shall represent or warrant, or be deemed to have represented and warranted, that it will comply with all federal, state and local environmental laws in its use of DED's Facilities and that it will not generate, store, dispose of, or transport hazardous substances on or about DED's Facilities. The term "hazardous substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic by any federal, state, or local law, regulation or rule now or hereafter in effect including any amendments. Each Licensee further shall represent and warrant, or be deemed to have represented or warranted, that in the event of breakage, leakage, incineration or other release, its Communications Facilities or Electric Facilities will not contribute to the dissemination or hazardous or toxic materials. Every Licensee (including but not limited to its agents, contractors and subcontractors) shall defend, indemnify and hold DED (including but not limited to its officials, officers, board members, council members, commissioners, representatives, employees, agents, contractors and subcontractors) harmless from any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by DED under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including DED's reasonable attorney fees and other expenses of litigation) arising from or due to the release, storage or discovery of any such hazardous or toxic materials on, under or adjacent to DED's Facilities attributable to the Licensee's Facilities.

(e) Hazardous Poles or Conduits. Should DED's Poles or Conduits be declared hazardous, then DED, Licensee and all Attaching Entities shall share in the cost of disposal of said Poles based on their proportionate use of the Poles or Conduits. For Attaching Entities such percentage shall be derived from the sum of Assigned Space occupied by each Attaching Entity plus its share of the Common Space. For DED, such percentage shall be equal to the space above the NESC 40 inch safety space plus its share of the Common Space. However, if the Joint Use Agreement with the local Telephone Company does not include this clause this paragraph shall be null and void.

If a hazardous condition is caused by particular parties, all resulting costs shall be borne solely by such parties.

(f) Municipal Liability Limits. No provision of this Chapter or any associated License Agreement is intended, nor shall it be construed, to waive applicable State immunity or limits on the City of Dover's or DED's liability. No indemnification provision contained in an Agreement under which a Licensee indemnifies DED shall be construed in any way to limit any other indemnification provision contained in this Chapter or in any associated License Agreement.

19. Duties, Responsibilities and Exculpation

(a) Duty to Inspect. Prior to making Attachment to any DED Facilities, every Licensee shall agree, or be deemed to have agreed, that DED does not warrant the condition or safety of DED's Facilities, or the premises or property surrounding the Facilities. Each Licensee shall further agree, or be deemed to have agreed, that it has an obligation to inspect DED's Facilities and the premises surrounding the Facilities prior to commencing any work on DED's Facilities or entering the premises surrounding the Facilities.

(b) Knowledge of Work Conditions. Every Licensee executing a License Agreement shall warrant that it has acquainted, or will fully acquaint, itself and its employees, agents, contractors and subcontractors, with the conditions relating to the work that Licensee or they will undertake under this Section and the associated License Agreement and that it and they fully understand, or will acquaint themselves, with the facilities, difficulties, and restrictions attending the execution of such work.

(c) DISCLAIMER. BY MAKING ITS FACILITIES AVAILABLE FOR ATTACHMENTS, DED MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO DED'S POLES OR CONDUITS, AND DED MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THE INDIVIDUAL LICENSE AGREEMENTS. DED FURTHER EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

(d) Duty to Conduct Competent Supervision and Performance. By executing a License Agreement, every Licensee acknowledges, or is deemed to have acknowledged, that in performing its work, the Licensee and its agents, servants, employees, contractors and subcontractors will work near electrically energized lines, transformers, or other DED Facilities, and that the parties intend that energy therein will not be interrupted during such work, except in an emergency endangering life, grave personal injury, or property. Every Licensee shall ensure that its employees, servants, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of DED, and the general public, from harm or injury while performing work permitted pursuant to this Section and associated Agreements. Each Licensee shall furnish its employees, servants, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Each Licensee shall agree that in emergency situations in which it may be necessary to de-energize any part of DED's equipment, the Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work will be conducted unless and until the equipment is made safe.

(e) Requests to De-energize. In the event that DED de-energizes any equipment or line at a Licensee's request or for its benefit and convenience, the Licensee shall reimburse DED for all its resulting costs and expenses. Before DED de-energizes any equipment or line, it shall provide, upon a Licensee's request, an estimate of all costs and expenses to be incurred in accommodating the Licensee's request.

(f) Interruption of Service. In the event that a Licensee causes an interruption of service by damaging or interfering with any equipment of DED, the Licensee at its expense shall immediately do all things reasonable to avoid any resulting injury or damages, direct and incidental, and shall immediately notify DED.

(g) Duty to Inform. As a condition to obtaining a License Agreement, every Licensee shall warrant that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on and around DED's Facilities by the Licensee's employees, servants, agents, contractors or subcontractors, and that Licensee accepts as the duty and sole responsibility to inform its employees, servants, agents, contractors or subcontractors of such dangers and to keep them informed regarding same.

20. Insurance and Bonding

Each Licensee shall maintain reasonable bonds and insurance throughout the term of its License Agreement in amounts sufficient to ensure Licensee's obligations under the License Agreement and in a manner as set forth in its License Agreement.

21. Assignment

(a) Limitations on Assignment. A Licensee may not assign its rights or obligations under a License Agreement adopted pursuant to this Section without the prior written consent of DED, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, a Licensee may assign or transfer its interest in a License Agreement to an Affiliate of the Licensee without DED's consent, provided that the Licensee furnishes to DED a guarantee that DED, in its sole discretion, finds acceptable.

(b) Obligations of Assignee/Transferee and Licensee. No assignment or transfer of a License Agreement shall be allowed until the assignee or transferee becomes a signatory to the License Agreement and assumes all obligations of the Licensee arising under the License Agreement.

(c) Sub-licensing. Without DED's prior written consent, a Licensee shall not sub-license space on DED's Facilities or allow a third party to make direct attachments to DED's Facilities or Overlash the Licensee's Facilities. The use of Licensee's Facilities by third parties (including but not limited to leases of fiber within Licensee's sheaths or Conduits) that involves no additional Attachment or Overlashing is not subject to the prohibitions of this paragraph (c).

22. Termination

(a) DED shall have the right, pursuant to the procedure set forth in paragraph 22(b) below, to terminate a License Agreement adopted pursuant to this Section, or any Permit issued thereunder, whenever a Licensee is in default of any material term or condition of this Section or of an associated License Agreement, including but not limited to the following circumstances:

(1) Construction, operation or maintenance of Licensee's Communications Facilities or Electric Facilities in violation of law or in aid of any unlawful act or undertaking; or

(2) Construction, operation or maintenance of Licensee's Communications Facilities in violation of any other agreement with DED; or

(3) Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has been lawfully denied or revoked by any governmental authority or private person; or

(4) Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under the Agreement.

(b) Upon receiving a written notice of default, a Licensee shall correct the default within thirty (30) calendar days or such longer period as DED in its sole discretion may grant in writing. When the default is corrected, the Licensee shall confirm this in writing to DED. If the Licensee fails to discontinue or correct a default within the prescribed period or fails to give the required confirmation, DED may immediately terminate the License Agreement, any Permit(s) issued under it, or both.

23. Notification of Parties Prior to Change in Ordinance

(a) Parties subject to this ordinance will be provided written notice 15 days prior to a City Committee, or City Council, consideration of modifications of the ordnance.

APPENDIX A

ATTACHMENT FEES AND CHARGES

Effective Date _____/_____/2008

1. Annual Pole Attachment Fee: $8.17 per pole

2. Periodic Review:
   At least every five years DED will review the cost inputs that formed the basis of the pole attachment rate and adjust the rate accordingly.

3. Unauthorized Attachment Penalty Fee
   (3 x annual attachment fee, per occurrence)

APPENDIX B

POLE ATTACHMENT PERMIT APPLICATION PROCESS

The following procedure is to be followed by each Licensee seeking to make or remove Attachments on or from DED's Poles. Note that no entity may make any Attachments to DED's Poles without having first entered into a binding Pole Attachment Agreement.

1. Licensee shall submit a properly executed Application for Permit (Appendix C), including the Pre-Permit Survey.

   A) DED will charge the applicant for expenses related to the Pre-Permit survey application based on the following methodology:
   - I. Less than 11 poles: $50 application fee plus $2.00/pole
   - II. Eleven poles up to and including 25 poles: $90 application fee plus $2.00/pole
   - III. Twenty-six poles or greater shall include a $4.00/pole application fee.

   B) DED will charge the applicant for expenses related to the leasing of conduit based on the following methodology:
   - I. Less than 100 feet: $50 application fee plus $0.50 foot
   - II. One-hundred feet to two-hundred and fifty one feet: $90 application fee plus $0.50 foot
   - III. Greater than two hundred and fifty feet shall include a $0.75 per foot application fee.

2. Following the Pre-Permit Survey, DED will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application.

3. Upon receipt of written authorization, DED will proceed with Make-Ready Work according to the specific agreed upon installation plans and the terms of the Agreement, including if necessary, payment for the Make Ready Work charges as set out by DED and agreed to by the Licensee.

4. DED will sign and return the Application for Permit authorizing the Licensee to make its Attachment(s) in accordance with agreed upon installation plans.

APPENDIX C*
APPLICATION FOR PERMIT

Application Date: ___/___/20___

To: **City of Dover, Public Utilities, Electric Engineering Department, 860 Buttner Place, Dover, DE 19904**

Desire to: □ Attach to Utility Pole(s) □ Remove Attachment from Utility Pole(s)

Permit No. _____ Superseded Permit No. _____

No. of Poles this permit _____ Sheet 1 of _____

Application Permit Fee $_____

Desire to: □ Lease conduit space □ Remove cable from conduit space

Permit No. _____ Superseded Permit No. _____

Footage desired under this permit _____ Sheet 1 of _____

Application Permit Fee $_____

Licensee Name:_____

Address: _____

Contact Person: _____ Title: _____ Phone No. _____
Utility Contact Person: _____ Title: _____ Phone No. _____

Narrative Description of proposed activity:

_____

_____

_____

_____

As a condition to obtaining a License Agreement, every Licensee shall warrant that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on and around DED's Facilities by the Licensee's employees, servants, agents, contractors or subcontractors, and that Licensee accepts as the duty and sole responsibility to inform its employees, servants, agents, contractors or subcontractors of such dangers and to keep them informed regarding same.

In accordance with the terms and conditions of the Pole Agreement dated ____/____/20___, application is hereby made for a Permit to attach to and/or vacate Pole(s) in the locations detailed on the attached Route Map(s).

Permission is hereby granted to Licensee to attach and/or vacate poles listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by Utility and agreed to by the Licensee.

SUBMITTED:	APPROVED:
Attaching Utility_____	City of Dover, Public Utilities, Electric Dept.
By _____	By _____
Title _____	Title _____
Date_____	Date _____

* The parties may substitute a different, mutually agreeable, permit form.

APPENDIX D
LICENSE AGREEMENT
EXECUTION PAGE

Furthermore, the City of Dover Electric Division has completed a pole attachment inventory and determined that _____ has attached to poles or leased conduit within the Electric Division service territory and agree that the Licensee has _____ utility poles attachments and_____ feet of conduit.

Licensee understands that they will be subject to the provisions of the applicable ordinance.

As a condition to obtaining a License Agreement, every Licensee shall warrant that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on and around DED's Facilities by the Licensee's employees, servants, agents, contractors or subcontractors, and that Licensee accepts as the duty and sole responsibility to inform its employees, servants, agents, contractors or subcontractors of such dangers and to keep them informed regarding same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the _____ day of _____, 20__ __.

(UTILITY)	(LICENSEE)
BY: _____	BY: _____
Title: _____	Title: _____

[Note: The following Notary section shall be used by both the Utility and Licensee.]

U T I L I T Y

STATE OF [INSERT STATE])

: ss

County of _____)

I, the undersigned, a Notary Public in and for the State of [Insert State], hereby certify that on the _____ day of _____, 20___, personally appeared before me [NAME] _____ _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

_____

Notary Public in and for the
State of [Insert State], residing at
_____, [Insert State]

L I C E N S E E

STATE OF _____)

: ss

County of _____)

I, the undersigned, a Notary Public in and for the State of _____, hereby certify that on the _____ day of _____, 20____, personally appeared before me [NAME] _____ _____, [TITLE] _____ to me known to be the individual described in and who executed the foregoing instrument and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year above written.

_____

Notary Public in and for the
State of _____, residing at
_____, _____.

APPENDIX E*
APPLICATION FOR
OVERLASHING PERMIT

Application Date: _____/_____/_____

To: **City of Dover, Public Utilities, Electric Engineering Department, 860 Buttner Place, Dover, DE 19904**
No Application Permit Fee Required

Permit No. _____
No. of Spans for this permit _____
Licensee Name:_____
Address: _____
Contact Person: _____ Title: _____ Phone No. _____
Utility Contact Person: _____ Title: _____ Phone No. _____

Narrative Description of proposed activity:

_____

_____

_____

As a condition to obtaining a License Agreement, every Licensee shall warrant that it understands the imminent dangers **(INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION)** inherent in the work necessary to make installations on and around DED's Facilities by the Licensee's employees, servants, agents, contractors or subcontractors, and that Licensee accepts the duty and sole responsibility to inform its employees, servants, agents, contractors or subcontractors of such dangers and to keep them informed regarding same.

In accordance with the terms and conditions of the Pole Attachment Ordinance, application is hereby made for a Permit to overlash in the locations detailed above or on the attached Route Map(s).

- ☐ APPROVED – Permission is hereby granted to Licensee to overlash the spans listed on the attached Field Data Summary Sheets,

- ☐ DENIED – Make Ready Work Required – subject to payment of the necessary Make-Ready Work charges as set out by Utility and agreed to by the Licensee. Once payment has been received, the City of Dover has completed Make-Ready Work, and Licensee has been notified by the Utility that the Make-Ready Work has been completed, the Licensee may complete the overlash installation.

Submitted by:	Response by:
Attaching Utility_____	City of Dover, Public Utilities, Electric Dept.
Signature: _____	Signature: _____
Title _____	Title _____

Date _____

* The parties may substitute a different, mutually agreeable, permit form.

Pole Attachment Fee Study

City of Dover Electric Division

Dover, Delaware

Prepared by:



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June 30, 2005

Pole Attachment Fee Study City of Dover Electric Division

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EXECUTIVE SUMMARY

We were engaged to conduct an analysis of Dover's electric operations to compute pole attachment rates. Pole attachment rates are essentially a rental fee charged to attachers of Dover's electric system. These attachers are typically telecommunications and cable companies and may include other non-traditional attachers such as the city's telecommunications attachments.

Our analysis was based on actual operational and financial information provided to us by utility management. In cases where data was unavailable for rate determination, assumptions were supplied by utility management.

While the telecommunications industry uses methodologies mandated by the Federal Communications Commission (FCC), municipal utilities are exempt from being required to follow FCC guidance. However, the general guidelines used as a basis for developing FCC based pole attachment rates have been incorporated into this analysis.

At times, it was not possible for our analysis to use actual financial and operational information due to Dover's existing methods to account for electric activities. In these cases, we used other methods to estimate data inputs into the model calculation. Having actual financial and operational information available for our calculations may have a significant impact upon the rates calculated as part of this project. Please refer to Observations in Section 3.0.

Our analysis computed pole attachment rates using the FCC-based model. Based on the information provided to us by utility management, the following is the annual attachment rates:

FCC-based: $8.17 per attachment

As discussed earlier, these numbers include several assumptions due to limited data availability. We strongly urge Dover to continue analyzing its operations with a goal to enhance the accuracy and completeness of financial and operational data to support these calculations. By continuing to enhance your systems accuracy, it will reduce the likelihood of increased scrutiny by attaching entities when evaluating the integrity of your rate calculation bases.

RATE METHODOLOGY

Assumptions underlying this methodology are described below:

FCC-based: The FCC-based methodology is aimed at emulating the formulas mandated by the FCC. This method is meant to provide you a perspective of your attaching entities. This method is followed by Local Exchange Carriers to determine their attachment rates when falling under the regulation of the FCC. These are the assumptions:

- All costs associated to support space are reduced by 33% before allocations are made to the attachment rate formula.
- All indirect costs of supervision and engineering have been removed from the formula.
- No costs of safety space are allocated to attaching entities.

OBSERVATIONS

Based on the information we have gathered from several key employees of both the City of Dover and Dover Electric, we have made a number of observations which will help to better understand our pole attachment fee calculations and methodologies.

Fee and Agreement Definitions

One area of confusion during our fieldwork appeared to be the difference between various types of fees and agreements being used in and around the City of Dover. Specifically, franchise fees, rights of way charges and pole attachment fees. Generally, industry practices would indicate that franchise agreements and pole attachment fees are designed to accomplish different objectives and should therefore be distinct contracts. Below is a brief description of each agreement for your reference.

Franchise Agreements:	Franchise fee agreements are used to establish a regulatory framework for the local cable providers and typically involve developing a business relationship whereby the city grants right-of-way to the provider in exchange for a franchise fee payment. There generally is no intent for the city to collect carrying costs of utility poles in this agreement since the franchise payment is purely based on revenue-sharing and not cost apportionment.
Rights of Way Fees:	It appears that some attaching entities are required to pay for right-of-way access within the city. These payments do not relate to pole attachment fees since pole attachment fees do not include any costs associated with land or land rights.
Pole Attachment Fees:	Pole attachment fees are fees charged to entities which attach to municipality-owned electric distribution and transmission poles. They compensate the city for the carrying costs associated with constructing, operating and maintain these poles and can be considered the cost of “renting“ a portion of the pole. Generally, these rates are meant to recover pole-related costs incurred by the utility and are not based on a revenue-sharing formula by the attaching entities.

Accounting Practices

The calculation of a pole attachment fee is sometime a challenge for municipality-owned electric companies due to a lack of activity based financial and operational information. Since the basis for developing pole attachment fees are cost-based, it is important that the City’s accounting practices promote an accurate representation of income, expense and financial position. These differences have made it necessary for the utility to use assumptions to estimate components of the pole attachment rate.

These accounting practices all tend to reduce the computed pole attachment rate which may result in lost revenue to the utility.

The following is a brief list of accounting practices that have provided us a basis for our comments:

FERC USOA (Federal Energy Regulatory Commission Uniform System of Accounts):
While using the FERC system of accounts is not a required practice in the State of Delaware, it is an industry best-practice that allows the utility to measure and monitor their activities based on the key aspects of their operation. Since FERC was not being used in Dover, we were required to use benchmark data, estimates and prorating techniques to arrive at pole maintenance costs.

Inaccurate Plant Accumulation:
Expensing vs. Capitalizing
The existing plant accounting system inaccurately captures costs of construction due to existing policies and procedures in place. For example, the utility does not capitalize any overhead line construction project with a project budget under $25,000. Since many capital projects exist annually with projects under that threshold, these capital costs are expensed and not capitalized, which overstates operating expenses and understates plant investment. As an example, during FY2004, no construction was capitalized to Overhead construction even though utility management identified many instances of construction projects.

Expensing of Labor
The city's historical practice to record labor and benefit costs does not accurately reflect costs of construction in the utility. Upon determination of a capital project, only materials and supplies are capitalized to a project while all labor and labor-related costs continue to be recognized as an operating expense. This practice is not an industry standard and also has the long term effect of materially misstating the utility's financial statements.

Expenses are Generally Captured
Since the FERC USOA is not being used, the utility relies on a chart of accounts to record activities similar to city operations. There is little to no activity-based recognition of operating costs. This reporting method made it difficult to identify pole related costs within the accounting system. As a result, we relied on utility management assumptions to arrive at pole operation and maintenance costs.

Pole Inventory Count

We were unable to obtain an accurate inventory of poles for the Dover Electric utility. We understand that several projects are in progress to identify all city-owned poles. However, nothing has been completed to date. An actual pole count is one of the most critical data inputs needed to arrive at a defendable pole attachment rate. Not having this data brings into question the accuracy of the computation used in the analysis. We were able to locate a data sheet identifying total system poles which we used as a basis for our computations. However, no utility personnel could attest as to the accuracy and basis for the report. Before the utility proposes changes to existing attachment rates, an accurate count of poles owned by the city should be attained and used to adjust the computed rates in this analysis.

Summary of Significant Assumptions

Based on conversations with several key employees and accounting information provided to us by the City of Dover and Dover Electric, we have made the following significant assumptions in our calculations of pole attachment fees.

Pole Count:	Pole count was computed to be approximately 10,500 poles. This is based on Dover Electric management's estimation that 75% of their detailed pole count has been completed and 8,000 poles have been counted to date.
Pole Height:	Poles are assumed to be an average of 37.5 feet high, consistent with industry practices. Each attacher is assumed to occupy one foot of the pole.
Attachers:	The average number of attachers on poles where attachments exist is assumed to be three.

Depreciation: Depreciation on poles is assumed to be 3.33%.

Plant in Service Accounts: Plant in Service Costs are based on estimated actual year-end cost for FYE June 30, 2005.

Income Statement Accounts: All income statement information as of 11 months ended 05/31/2005 was provided by the City of Dover Finance Department. These amounts were increased by a factor of 12/11 in order to estimate total expenses for FY 2005.

Administrative and General Expenses: Administrative and general expenses include all Dover Electric administrative expenses and an Interfund Transfer paid to the City of Dover which represents indirect administrative costs, including human resources, IT, joint purchasing, central maintenance and others.

Supervisor/Engineering Expense: Supervision and engineering labor attributable to poles is assumed to include two employees (one supervisor, one engineer). Each is assumed to have a salary of $50,000. The time dedicated to actual supervision or engineering is assumed to be 50% of their total time. Of this, 25% of their time is dedicated to the supervision of overhead equipment, for a total base salary attributable to overhead distribution of approximately $12,500. This amount was increased by 47% to account for benefits and taxes. This is based on the ratio of benefits to salaries for Dover Electric as of 05/31/05.

Cost of Poles, Towers and Fixtures: The cost of poles, towers and fixtures was computed based on benchmark data from other municipally-owned electric utilities that had readily available property record data.

City of Dover Electric
Pole Attachment Fee Study

FCC-Based Method

Computation of Carrying Charge Rate
Prepared on June 29, 2005

Administrative and General Expense Percentage			
Total administrative and general expenses		$ 4,147,745	
Divide by: Plant in Service Plant @ 5/31/2005			
Plant in service	$ 129,261,520		
Plant in Service		$ 129,261,520	
Administrative and General Expense Percentage			3.21%
Operating and Maintenance Expense Percentage			
Supervision/Engineering expense		$ -	
Add: Poles and overhead line expense		$ 2,723,753	
Add: Other directly attributable expenses		$ -	
Subtotal		$ 2,723,753	
Divide by: Overhead-related items Street Lights	$ 1,035,892		
Transmission Overhead	5,209,472		
Transmission Under Ground	2,731,250		
Distribution Lines Overhead	5,569,057		
Distribution Lines Under Ground	8,739,441		
		$ 23,285,112	
Operating and Maintenance Expense Percentage			11.70%
Depreciation Rate for Utility Poles			3.33%
Return on Investment for Utility			4.00%
TOTAL ANNUAL CARRYING CHARGE RATE			**22.24%**

City of Dover Electric
Pole Attachment Fee Study

Computation of Estimated Cost of a Bare Pole

Gross Investment in Poles	
Total cost of poles, towers and fixtures	**$ 2,686,761**
Multiply by: Percent of costs allocable to bare poles	**85%**
Net Investment in Poles	**$ 2,283,747**
Divide by: Number of Poles Owned	**10,500**
ESTIMATED COST OF A BARE POLE	**$217.50**

City of Dover Electric

Pole Attachment Fee Study

Support Space Factor				
Cost of the bare pole		$ 217.50		Computed
Multiply by: Percentage of unusable space on the pole				
Support space	24.00			Given
Divide by: Average pole height	37.50			Given
Support space percentage		64.00%		
FCC Adjustment for Support Space		66.67%		
Multiply by: Carrying charge rate		22.24%		Computed
Total Support Carrying Charge per pole		20.64		Computed
Divide by: Average number of attachers		3.00		Entered
Total Support Space Factor			$ 6.88	
Safety Space Factor				
Cost of the bare pole		$ 217.50		Computed
Multiply by: Percentage of unusable space on the pole				
Safety space	-			Given
Divide by: Average pole height	37.50			Given
Support space percentage		0.00%		
Multiply by: Carrying charge rate		22.24%		Computed
Total Safety Carrying Charge per pole		-		
Divide by: Average Number of Attachers		3.00		Entered
Total Safety Space Factor			$ -	
Usable Space Factor				
Cost of a bare pole		$ 217.50		Computed
Multiply by: Percentage of usable space on the pole				
Total feet assigned to an attacher	1.00			Computed
Divide by: Total presumed pole height	37.50			Computed
Usable space percentage		2.67%		
Multiply by: Carrying charge rate		22.24%		Computed
Total Usable Carrying Charge per pole		1.29		
Total Usable Space Factor			$ 1.29	
POLE ATTACHMENT FEE - FCC-BASED METHOD			$ 8.17	

City of Dover Electric
Pole Attachment Fee Study

Assumptions and Input Calculations

Administrative and General Expense Inputs

			Amounts Cross referencing
Total electric plant in service FY 2004	$	128,522,854	Doc. B; p. 1
Total FY 2005 projects		2,238,666	Doc. C; last page
Total electric plant in service FY 2005	$	130,761,520	
Retirements	$	1,500,000	Estimated based on 2004 retirements
Plant in service	**$**	**129,261,520**	
Administration Expenses	$	666,076	Doc. A; p 74
Interfund Transfer		3,136,024	Doc. A; p 78
A & G Expenses 11 mo. Ended 5/31/05	$	3,802,100	
Total administrative and general expenses	**$**	**4,147,745**	Multiplied by 12/11

Operating and Maintenance Expense Inputs

Supervisor/Engineer Salaries	$	100,000	Assumption
Time dedicated to supervision/engineering		50%	Assumption
Time dedicated to distribution (vs. transmission)		50%	Assumption
Time dedicated to overhead (vs. under ground)		50%	Assumption
	$	12,500	
FICA	$	93,718	Doc. A; p. 69
Health Insurance		170,957	Doc. A; p. 69
Long-term Disability Insurance		3,892	Doc. A; p. 69
Worker's Compensation		47,420	Doc. A; p. 69
Pension		194,867	Doc. A; p. 69
	$	510,854	
Salaries	$	1,082,358	Doc. A; p. 69
Overhead as a percent of salaries		47%	
Supervision/Engineering Expense	**$**	**18,400**	
Transmission/Distribution Expenses 11 mo. Ended 5/31/05	$	2,515,173	Doc. A; p. 70
T/D Expense less Supervision/Engineering Expense	$	2,496,773	
Poles and overhead line expense	**$**	**2,723,753**	Multiplied by 12/11
Street Lights FY 2004	$	1,023,040	Doc. B
Street Lights FY 2005 Projects		12,852	Doc. C; last page
Street Lights	**$**	**1,035,892**	
Transmission Overhead FY 2004	$	5,209,472	Doc. B
Transmission Overhead FY 2005 Projects		-	Doc. C; last page
Transmission Overhead	**$**	**5,209,472**	
Transmission Under Ground FY 2004	$	2,731,250	Doc. B
Transmission Under Ground FY 2005 Projects		-	Doc. C; last page
Transmission Under Ground	**$**	**2,731,250**	
Distribution Lines Overhead FY 2004	$	4,995,894	Doc. B
Distribution Lines Overhead FY 2005 Projects		573,163	Doc. C; last page
Distribution Lines Overhead	**$**	**5,569,057**	
Distribution Lines Under Ground FY 2004	$	8,535,800	Doc. B
Distribution Line Under Ground FY 2005 Projects		203,641	Doc. C; last page
Distribution Lines Underground	**$**	**8,739,441**	