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HUNTON ANDREWS KURTH

HUNTON ANDREWS KURTH LLP
RIVERFRONT PLAZA, EAST TOWER
951 EAST BYRD STREET
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
FAX 804 • 788 • 8218

TIMOTHY E BILLER
DIRECT DIAL: 804 • 788 • 8756
EMAIL: tbiller@HuntonAK.com

August 12, 2020

BY: ELECTRONIC FILING

The Clerk of the Commission
State Corporation Commission
c/o Document Control Center
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Richmond, Virginia 23219

**Re: Petition of Sunset Digital Communications (DE) LLC
(USED IN VA BY: SUNSET DIGITAL
COMMUNICATIONS, LLC)
D/B/A POINT BROADBAND
Case No. PUR-2020-00143**

Dear Sir:

Enclosed for filing in the above referenced proceeding please find the Response of Powell Valley Electric Cooperative to Point Broadband's Motion for Preliminary Injunction.

Thank you and please feel free to contact me if there are any questions on this matter.

Sincerely,



Timothy E. Biller

Enclosure

cc: Raymond L. Doggett, Esq.
Frederick Ochsenhirt, Esq.
Cliona M. Robb, Esq.
Michael J. Quinan, Esq.
James G. Ritter, Esq.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF

SUNSET DIGITAL COMMUNICATIONS (DE) LLC
(USED IN VA BY: SUNSET DIGITAL
COMMUNICATIONS, LLC),
D/B/A POINT BROADBAND

CASE NO. PUR-2020-00143

**RESPONSE OF POWELL VALLEY ELECTRIC COOPERATIVE TO
POINT BROADBAND'S MOTION FOR PRELIMINARY INJUNCTION**

On August 6, 2020, Petitioner Sunset Digital Communications (DE) LLC (Used in VA by: Sunset Digital Communications, LLC) d/b/a Point Broadband ("Point"), filed its Motion for Preliminary Injunction ("Motion") in this case. On August 10, 2020, the Commission entered an Order directing Powell Valley Electrical Cooperative ("PVEC") to file its response to Point's Motion by August 12, 2020. This Response on behalf of PVEC incorporates PVEC's Motion to Dismiss and Demurrer which were filed on July 31, 2020. PVEC respectfully requests that the Commission deny Point's Motion and dismiss this proceeding.

I. Factual Background¹

PVEC is a consumer-owned utility that provides electric service to over 32,000 consumers in northeast Tennessee and southwest Virginia, with the majority of the customers located in Tennessee.² PVEC is headquartered in New Tazewell, Tennessee. Point, which is a

¹ In addition to specific references cited herein, PVEC relies on the facts set out in the verified Complaint which it filed in the Chancery Court for Claiborne County, Tennessee, Case No. 19548, against Point Broadband Fiber Holding, LLC and Sunset Digital Communications, Inc. ("Verified Complaint"), which is attached hereto as Exhibit A, and to the Affidavit of Randell Meyers ("Meyer's Affidavit"), attached hereto as Exhibit B.

² Meyers Affidavit, paragraph 2.

Delaware corporation, is a subsidiary of ITC Capital Partners, LLC, a Delaware limited liability company. Both Point and ITC are headquartered in West Point, Georgia.

PVEC maintains more than 3,500 miles of electric line in its distribution and service infrastructure.³ On January 1, 2017, PVEC entered into a Joint Use Pole Agreement (“Agreement”) with Sunset Digital Communications, Inc. (“Sunset”), a Virginia corporation headquartered in Duffield, Virginia, to allow Sunset to utilize PVEC’s utility poles to deploy a high-speed fiber optic network. The Agreement allowed Sunset to make attachments to PVEC’s utility poles, and to access PVEC’s power space on those poles, provided Sunset adhered to certain express requirements in the Agreement needed to: (a) assure safety; (b) protect the integrity and reliability of PVEC’s electric distribution system; and (c) insure that Sunset followed generally applicable engineering principles when attaching to PVEC’s poles.

The Agreement also limited Sunset’s right to assign or transfer its rights under the Agreement without the prior written consent of PVEC. By the express terms of the Agreement, failure by Sunset to obtain consent for an assignment or transfer of the Agreement constituted cause to terminate the Agreement. Similarly, the Agreement required Sunset to promptly notify PVEC in writing if control of Sunset was transferred by sale of stock or otherwise, and failure to give such notice constituted cause to terminate the Agreement.

On or about August 1, 2018, Sunset was acquired by Sunset Fiber, LLC (“Sunset Fiber”), a Delaware limited liability company that was controlled by ITC Capital Partners. Sunset failed to provide prompt notice of the transfer to PVEC, either before or after its close. Similarly,

³ Meyers Affidavit, paragraph 2.

Sunset failed to seek or obtain PVEC's consent to its assignment and/or transfer of its rights under the Agreement to Sunset Fiber.

Apparently, at some point after August 1, 2018, ITC Capital Partners directed its subsidiary, Sunset Fiber, to transfer "all rights and assets of Sunset Digital Communications, Inc., including the fiber optic network previously owned and operated by Sunset Digital Communications, Inc.," to Point.⁴

By letter dated January 20, 2020, Randell Meyers, General Manager and Chief Executive Officer of PVEC, notified Point that PVEC "does not have a direct agreement with Point Broadband (Point) concerning the Sunset Digital attachments acquired."⁵ In addition, Mr. Meyers notified Point that the Agreement required: (a) the use of "qualified persons"⁶ when working in PVEC's "power space"⁷ on its utility poles; and (b) before making any attachments on PVEC's poles, that an application for attachment be made to PVEC, and a permit granted.

Notwithstanding Mr. Meyers's letter, Point continued to make attachments on PVEC's poles without filing applications or obtaining permits, and it continued to have non-qualified persons do work in the power space on PVEC's poles. From January to March of this year, Point made at least 368 attachments for which it neither filed an application nor obtained a permit. There are approximately 13,619 points of attachment of the Sunset/Point fiber network to PVEC utility poles; 12,616 on PVEC poles in Tennessee and 1003 on PVEC poles in Virginia.⁸

In May, PVEC wrote Point reiterating its concerns about Point's use of non-qualified persons to work in PVEC's power space, and Point's continuing practice of making attachments

⁴ Point's Complaint and Petition For Injunctive Relief and Request for Expedited Action, paragraph 1.

⁵ Meyers January 20, 2020 letter to Todd Holt, attached as Exhibit C.

⁶ The Agreement (page 3) defines "qualified persons" as "duly trained and currently certified as a 'journeyman electrical lineman' as commonly recognized and accepted within the electric industry."

⁷ The Agreement (page 2) defines "power space" as "the area extending 40 inches below the Licensor's conductors (phase, neutral, secondary-not in conduit), transformers, or other power line equipment and devices..."

⁸ Meyers Affidavit, paragraph 6.

without giving advance notice, filing applications or obtaining permits. Point's response indicated that Point intended to continue to use non-qualified persons and to only give notice to PVEC of attachments a month after the fact.⁹

In addition to Point's practice of using non-qualified persons to work on PVEC's poles and in PVEC's power space, and making attachments without advance notice, applications or permits, Point has engaged in other activity that presents safety hazards, imperils the reliability of PVEC's system, and fails to follow generally applicable engineering principles. Examples of these activities are detailed in the Verified Complaint and include: leaving cables hanging loosely from utility poles; cables hanging from utility poles to the ground; and creating coils of loose cable around PVEC's utility poles which make it dangerous and/or impossible for PVEC employees to climb the poles and service PVEC's electrical apparatus.¹⁰ These activities have resulted in dangerous conditions which significantly increase PVEC's response time to power outages on its electric system.¹¹

On July 27, 2020, as a result of Point's continuing refusal to comply with the requirements of the Agreement, PVEC notified Sunset Digital Communications, Inc. by letter, with a copy to Point, that it was exercising its rights under Section 20 of the Agreement to terminate the Agreement and the attachment permits issued under it.¹²

As noted in PVEC's Motion to Dismiss and Demurrer, PVEC filed a verified Complaint and a Motion for Temporary Injunction against Point in the Chancery Court for Claiborne

⁹ Petition, Exhibit E.

¹⁰ Verified Complaint at paragraphs 23-25.

¹¹ Verified Complaint at paragraph 25.

¹² Letter, Meyers to Sunset Digital Communications, July 27, 2020, attached to PVEC's Motion to Dismiss and Demurrer as Exhibit A.

County, Tennessee, on July 28, 2020, a copy of which is attached as Exhibit A to this filing. PVEC intends imminently to file a similar complaint and motion in a Virginia Circuit Court.

Further, it is important to note that PVEC does not provide broadband service and does not seek to provide broadband service itself, contrary to Point's insinuations.¹³ PVEC has constructed and continues to construct fiber in many locations throughout its territory, including rural locations that neither Point, nor any other broadband provider, has sought to serve. PVEC is simply constructing and maintaining the fiber and using it for its own internal communications needs. It has entered into an agreement with another broadband provider, however, to provide service over PVEC's fiber for those customers who desire such service.

II. Argument

As discussed extensively in PVEC's Motion to Dismiss and Demurrer, the Commission is not the appropriate forum for this dispute. In both its Motion and in its Reply to PVEC's Motion to Dismiss and Demurrer, Point goes out of its way to sidestep the clear boundaries of the Commission's jurisdiction over the subject matter underlying the dispute between the parties. Instead, Point makes broad contentions regarding the Commission's general authority over PVEC and largely ignores the issue of the Commission's actual jurisdiction over this dispute. While PVEC does not contest that there is a clear and ongoing dispute between PVEC and Point, it is a dispute grounded solidly in basic contract interpretation and the safety requirements that apply both before and while Point makes attachments to PVEC's poles. Indeed, while Point's complete disregard for the safety of its workers and the public is a clear concern that must be addressed, it is not something that requires the Commission's attention or falls within the Commission's regulatory or adjudicatory authority. Instead, these concerns are currently being

¹³ Point Reply to Motion to Dismiss and Demurrer at 10.

addressed or will soon be addressed in the appropriate circuit courts in both Tennessee and Virginia. Indeed, as Exhibit A makes clear, PVEC is requesting that the appropriate courts restrict Point from making any new attachments to PVEC's poles during the pendency of this dispute or, if the court finds that Point has rights under the Agreement, to require Point to follow the safety requirements in the Agreement. PVEC has no intention of forcing Point to take down its lines while this dispute is pending, but nevertheless needs to ensure that its system is protected from harm.

Point's Motion asks the Commission to take three actions: (1) to issue an order enjoining PVEC from approaching Point's workers that are working on PVEC's poles while this dispute is ongoing; (2) to issue an order finding that the Agreement will govern the interactions of PVEC and Point; (3) to anticipatorily provide Point the right to commence additional proceedings before the Commission to establish a new contractual relationship between the parties.¹⁴ The filings in this matter to-date, however, make clear that in order for the Commission to address any of these issues, it would first have to decide basic contract-law issues. Specifically, it would have to determine whether the Agreement was validly assigned to Point, whether the Agreement provides any contractual rights to Point, and whether PVEC's termination of the Agreement was effective. Were it to resolve these basic contract law issues, then the Commission would have to determine whether Point's actions violate the terms of the Agreement, specifically those terms relating to safety, reliability and generally applicable engineering principles, and whether any good faith negotiations have occurred between the parties. Assuming for a moment that any of these issues fall within the Commission's jurisdiction, the Commission can grant Point's requests only after resolving all of these questions.

¹⁴ Motion at 14.

- A. This is a dispute over the existence of a contractual relationship between the parties and contract interpretation, which the Commission does not entertain.

Like its initial Petition, Point's Motion suffers from a fundamental defect that Point fails to address and indeed attempts to sidestep: the Commission has no jurisdiction to grant the relief Point requests. As PVEC explained in its Motion to Dismiss and Demurrer and as is further reinforced on the face of Point's filings in this matter, in order to grant the relief it requests, Point asks the Commission to adjudicate contract-law claims and enforce contractual rights arising from a privately negotiated contract between two parties. While the statutes under the Commission's jurisdiction may provide some authority for the Commission to resolve certain disputes that arise out of good faith negotiations over the type of contract at issue here, they do not give the Commission general authority to resolve basic disputes over the existence of a contract and the interpretation of existing contractual terms. According to well-settled law, contract claims such as these are beyond the scope of the Commission's jurisdiction.

Subject matter jurisdiction is "the authority granted through constitution or statute to adjudicate a class of cases or controversies."¹⁵ It "cannot be waived or conferred on the court by agreement of the parties," and a defect in subject matter jurisdiction "cannot be cured by reissuance of process, passage of time, or pleading amendment."¹⁶ A decision on the merits made without subject matter jurisdiction is "null and void" and can be challenged at any time, including for the first time on appeal by a court itself.¹⁷

The Commission and the Supreme Court of Virginia have long held that the Commission lacks any general authority to adjudicate contract disputes involving public service companies.

¹⁵ *Morrison v. Bestler*, 239 Va. 166, 169, 387 S.E.2d 753, 755 (1990) (citation omitted).

¹⁶ *Morrison*, 239 Va. at 169-70, 387 S.E.2d at 755 (citation omitted).

¹⁷ *Id.* at 170, 387 S.E.2d at 755-56 (citations omitted).

“Nothing is better settled than that this Commission does not have jurisdiction to adjudicate and determine private rights or private contracts between public service corporations and individuals.”¹⁸ The Commission “has no inherent power simply because it was created by the Virginia Constitution”; as a result, “its jurisdiction must be found either in constitutional grants or in statutes which do not contravene that document.”¹⁹ The constitutional and statutory provisions delegating power to the Commission “were not intended to confer upon the [C]ommission jurisdiction to hear and determine cases against such corporations in which the matters in controversy relate primarily to injuries to private property rights and only affect the public incidentally.”²⁰ The Virginia Supreme Court has stated that, in short, “[t]he question whether a contract has been breached is for the courts to determine.”²¹

Virginia Code § 56-466.1—the statute governing electric cooperative pole attachments, and the statute Point relies upon—also confirms that the Commission lacks jurisdiction over disputes such as this one. Although the statute authorizes the Commission to determine just and reasonable pole attachment rates and terms and conditions of service, it places clear boundaries on that grant of authority. For example, the statute prohibits the Commission from determining rates or terms and conditions “for any existing agreement” until the agreement expires or is terminated pursuant to its own terms.²² Point argues that because PVEC has terminated the

¹⁸ *Appalachian Power Co. v. John Stewart Walker, Inc.*, 214 Va. 524, 533-34, 201 S.E.2d 758, 766 (1974) (quoting *City of Lynchburg v. Commonwealth*, 164 Va. 57, 63-64, 178 S.E. 769, 771 (1935)) (internal citations omitted).

¹⁹ *VYVX of Virginia, Inc. v. Cassell*, 258 Va. 276, 290, 519 S.E.2d 124, 131 (1999) (quoting *City of Norfolk v. Virginia Elec. and Power Co.*, 197 Va. 505, 514, 90 S.E.2d 140, 146 (1955)).

²⁰ *Appalachian Power Co.*, 214 Va. at 531, 201 S.E.2d at 764 (citation and internal quotation marks omitted).

²¹ *Id.* at 534, 201 S.E.2d at 766.

Agreement, the Commission now has full jurisdiction to resolve any dispute by the parties.²³ It should be noted, however, that Point also argues that the termination was invalid.²⁴ Clearly disputes over basic contract law issues must be resolved before the Commission can grant any of Point's requests.

For example, Point seeks "an injunctive order" directing PVEC to "cease and desist from confronting and harassing Point Broadband's employees."²⁵ PVEC categorically denies that it has harassed or improperly confronted Point's employees. Instead, it has attempted to enforce its rights under the Agreement and applicable law to prevent Point's employees and contractors from interfering and obstructing PVEC's service and operations, and to prevent the creation of a safety hazard.²⁶ In any case, this request for relief is premised on Point's erroneous belief that its employees actually have the authority under the Agreement to perform work on PVEC's poles. Moreover, Point asks the Commission to determine that the Agreement will continue to govern the parties and provide Point the right to attach to PVEC's poles. However, as noted above, the Parties have a basic dispute over whether an Agreement between Point and PVEC ever existed in the first place. In other words, to grant these requests, the Commission would necessarily need to resolve various contract-law issues, including whether a contract exists and whether it was validly assigned to Point, in order to establish, as a foundational matter, whether any past or present privity of contract existed between the parties, whether the Agreement was validly terminated, and whether the work Point performs on PVEC's poles is authorized by or in

²³ Point Response to Motion to Dismiss and Demurrer at 4.

²⁴ Motion at 7.

²⁵ Motion at 14.

²⁶ Virginia Code 56-466.1(D) provides in relevant part: "Notwithstanding the provisions of subsection C, a public utility providing electric utility service may deny access by a telecommunications service provider or cable television system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole or part, by such public utility, provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons of safety, reliability, or generally applicable engineering principles."

compliance with the Agreement. These are all contract issues beyond the Commission's jurisdiction, but deciding them is a necessary prerequisite to granting the relief Point seeks from the Commission.

Point's contention that the requirements in Va. Code Section 56-466.1 somehow provide the Commission authority over basic contractual disputes is unavailing here.²⁷ PVEC does not dispute that this Code section contains a requirement that it negotiate in good faith for attachments to PVEC's poles. However, the statute does not provide the Commission jurisdiction to enforce every contractual dispute related to pole attachments through this requirement. Indeed, Subdivision F of Section 56-466.1 provides clearly defined limitations on the Commission's jurisdiction to resolve disputes related to pole attachment agreements. Indeed, the statute states:

The Commission is authorized to determine just and reasonable rates, and terms and conditions of service, excluding safety and debt collection, for attachments to electric cooperative poles by telecommunications service providers or cable television systems if, following good faith negotiations to do so, the parties cannot reach agreement thereon; however, the Commission shall not determine rates or terms and conditions for any existing agreement until it expires or is terminated pursuant to its own terms.²⁸

This clearly and unequivocally defines the Commission's jurisdiction in disputes over pole attachment agreements and reinforces the long-standing precedent that the Commission does not have general jurisdiction over such a contract and related disputes.

Accordingly, should Point believe it has a valid basis to seek the relief it asks the Commission for, it should pursue such relief in the appropriate court of general jurisdiction rather than seeking to invoke the Commission's specialized authority. While PVEC is seeking to

²⁷ See, e.g., Motion at 9.

²⁸ Va. Code Section 56-466.1 F.

resolve these issues in the appropriate courts, to PVEC's knowledge, Point has not filed any requests in any court related to this matter beyond attempting to seek relief from the Commission.

B. This is a safety issue and therefor Commission does not have jurisdiction under 56-466.1

Leaving aside that, at its core, this is basic a contract law dispute between PVEC and Point, the substantive issue for which Point seeks to invoke the Commission's jurisdiction to enjoin PVEC's actions specifically relates to determining what the safety-related requirements are that condition Point's asserted right to make attachments to, and work on, PVEC's poles. Indeed, as detailed in PVEC's request for injunctive relief in Tennessee, Point continues to disregard the provisions in the Agreement between Sunset and PVEC that govern how Sunset was permitted to safely attach to PVEC's poles. As discussed above, Point has failed to use the required journeyman electric linemen, who are specially qualified to work in close proximity to high-voltage electric lines, as Sunset was required to do under the Agreement. Further, Point has made no effort to make application to PVEC prior to attaching to PVEC's poles, and indeed specifically disclaims any requirement to do so.²⁹ These provisions of the Agreement are clearly and indisputably intended to govern the safety of any attachments made to PVEC's poles, the safety of those working in and around PVEC's power space on those poles, the safety of PVEC's (and Point's) workforce, and the safety of PVEC's customers and the general public.

Section 56-466.1 F clearly states that the "Commission is authorized to determine just and reasonable rates, and terms and conditions of service, *excluding safety* and debt collection, for attachments to electric cooperative poles." Accordingly, even if the Commission had general subject matter jurisdiction under this statute over the current dispute between PVEC and Point, it

²⁹ Petition at Exhibit E.

would not have the specific subject matter jurisdiction to determine the core substantive dispute between the parties over what requirements exist for Point to attach to PVEC's poles to protect the safety of the employees of both Point and PVEC, PVEC's customers, and the public in general.

C. Point has not met the standard for a Preliminary Injunction:

In determining whether to grant temporary injunctive relief, the Commission has applied multiple standards over time. Recently, it applied the standard set forth in *May v. R.A. Yancey Lumber Corporation*: "In general, a court may not grant injunctive relief unless a party has shown that [it] would suffer irreparable harm without the injunction, and that the party has no adequate remedy at law. ... No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity."³⁰ The Commission also has applied the traditional four-factor test from the U.S. Supreme Court set forth in *Winter v. NRDC*, which generally adds to the above standards a requirement that the party seeking injunctive relief show that the party is likely to succeed on the merits.³¹

Point argues that it need not establish any of these traditional prerequisites for injunctive relief.³² In its view, the General Assembly has "mooted" these requirements by statute, and has "fully empowered" the Commission to grant injunctive relief automatically.³³ Yet the two statutes Point relies upon—Virginia Code §§ 12.1-13 and 56-5—do not provide for automatic injunctive relief. Instead, they merely grant the Commission authority to award injunctions

³⁰ *Petitions of Virginia Electric and Power Company, For a declaratory judgment*, Case Nos. PUR-2020-00117 and PUR-2020-00118, Order on Enrollments at 3 n.2 (Aug. 21, 2019) (quoting *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 17-18, 822 S.E.2d 358, 367 (2019)).

³¹ See *Petition of William C. Barnhardt, For declaratory and injunctive relief*, Case No. PUE-2015-00109, Order at 3 (Oct. 19, 2015) (citing *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374 (2008)).

³² Motion at 9.

³³ *Id.*

generally. Those provisions do not abandon the traditional prerequisites long required by this Commission and Virginia courts. Indeed, if Point's argument is correct, then the Commission would never need to apply *May* or *Winter* or any other formulation of the traditional requirements. Yet that is precisely what the Commission has done, including in recent cases. Point has offered no valid reason why it should be allowed to escape those requirements.

The two cases Point cites to support its claim that the Commission may grant automatic injunctive relief—*Carbaugh v. Solem*³⁴ and *Virginia Beach S.P.C.A. Inc. v. South Hampton Roads Veterinary Association*³⁵—are inapposite.³⁶ In *Carbaugh*, the statute in question stated: “[i]n the event of violation of any provision of *this article or the regulations adopted thereunder*, either commissioner may petition any appropriate court of record for relief by injunction, *without being compelled to allege or prove that an adequate remedy at law does not exist*.”³⁷ Thus the statute, on its face, dispensed with the normal factors in a narrow range of cases. The statute at issue here, Virginia Code § 56-466.1, mentions nothing about injunctive relief, and certainly does not create an exception to the normal standard *sub silencio* or otherwise.

Virginia Beach S.P.C.A., too, is readily distinguishable. As in *Carbaugh*, the applicable statute in *Virginia Beach S.P.C.A.* specifically provided that “any person unlawfully practicing veterinary medicine may be temporarily or permanently enjoined from such unlawful practice by the circuit court.”³⁸ Unlike Va. Code §§ 12.1-13 and 56-6, which merely vest the Commission with general authority to issue injunctions (when the applicable grounds have been satisfied), the

³⁴ 225 Va. 310, 302 S.E.2d 33 (1983).

³⁵ 229 Va. 349, 329 S.E.2d 10 (1985).

³⁶ See Motion at 9.

³⁷ *Carbaugh*, 225 Va. at 35 (emphasis added).

³⁸ *Virginia Beach S.P.C.A. Inc.*, 229 Va. at 353-54.

statute in *Virginia Beach S.P.C.A.* explicitly authorized courts to enjoin a specific, prohibited act (the unlawful practice of veterinary medicine).³⁹

Also in *Virginia Beach S.P.C.A.*, the party being enjoined did not challenge the finding that it was unlawfully practicing veterinary medicine in violation of the statute.⁴⁰ Thus, the court found there was no need to consider the traditional four factors before issuing the injunction; the ultimate issue was already decided and the statute gave authority to issue an injunction in that specific circumstance.⁴¹ In contrast, here, the parties disagree about whether they have ever had a contractual relationship in the first place and also dispute whether Va. Code §56-466.1 even applies to the issues currently in dispute. Neither *Carbough* nor *Virginia Beach S.P.C.A.* apply here.

Accordingly, to obtain temporary injunctive relief, Point Broadband must show that it meets the prerequisites for such relief under the standards that the Commission has previously applied in granting such relief. Although Point Broadband makes a passing attempt to address some of those requirements, it falls well short of making the required showing.

1. PVEC's actions are not harassment

Initially, Point fails to even make a showing that PVEC's actions are inappropriate or something that should be enjoined. Indeed, although Point now attaches affidavits to its Motion in support of its contentions, these affidavits are both legally inadequate (as discussed further below) but, more importantly, do not show that PVEC has taken any inappropriate actions. All PVEC has done is engage in professional and non-aggressive actions in order to ensure that both Point's employees and PVEC's employees, as well as the public in general, are not threatened by

³⁹ *See id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Point's actions. Indeed, Point's refusal to discontinue work on PVEC's poles until the contractual dispute between the parties is resolved and Point's apparent refusal to begin using workers that are appropriately trained to work in close proximity to high-voltage power lines where Point has been attaching to PVEC's poles, despite its claims that it would do so, pose a threat to both Point's and PVEC's employees and the public should Point's untrained workers come in contact with high voltage lines or otherwise take an action that does damage to PVEC's poles or high voltage facilities. Indeed, the affidavits included with Point's Motion show nothing more than that PVEC has, in a non-aggressive manner, sought to ensure that Point's refusal to abide by reasonable requests does not compromise the safety of anyone concerned.

Moreover, as noted above, Virginia Code Section 56-466.1 D provides that: "a public utility service may deny access by a telecommunications service provider or cable television system to any pole...owned or controlled, in whole or part, by such public utility, provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity *or reasons of safety, reliability, or generally applicable engineering principles.*"⁴² Accordingly, PVEC is fully within its rights to seek to deny access to its poles while this dispute regarding the safety of the attachments is ongoing and while Point continues to refuse to abide by PVEC's requests to follow appropriate procedures to ensure the safety of these attachments.

PVEC clearly has the right under the Agreement and Section 56-466.1 D to enforce safety requirements related to work on its poles. Any incidental harm to Point from a slow-down in its business is a result of Point's own actions and its failure to abide by the safety requirements, of which it has been advised by PVEC since at least January of this year. Moreover, the equity clearly cannot tip in Point's favor as Point's actions in violating the safety

⁴² Va. Code Section 56-466.1 D (emphasis added).

requirements pose a real and ongoing threat of harm. This threat exists for the employees of Point who are asked to work on PVEC's poles without proper qualifications to operate in PVEC's power space in proximity to high voltage electric lines. This threat also exists for PVEC's employees who could be asked to work on poles, the safety or structural integrity of which have been compromised by Point's refusal to follow PVEC's safety requirements for attachments to its poles and by Point's refusal to use qualified persons (i.e. duly trained and currently certified journeyman electrical lineman) to do the work on PVEC's poles. A threat also exists to PVEC's customers and to the public in general who could be impacted if PVEC is unable to work on its lines, or if the structural integrity of a pole is compromised to the extent the pole is taken down either in the course of a storm or another accident. Given the potential ramifications for permitting Point to continue to attach to PVEC's poles, the equity cannot tip in Point's favor in its request for PVEC to be enjoined from further enforcing the safety requirements.

PVEC would also note that Point, as the party seeking the preliminary injunction, bears the burden of proof. As such, the quality and sufficiency of Point's evidence to support its Motion is subject to question. For example, the affidavit of Robert J. Puckett, which Point asserts supports its claims of harassment, suffers from two deficiencies. First, the majority of the alleged "incidents" it refers to allegedly occurred in Tennessee, not Virginia. Such alleged "extra-jurisdictional" conduct does not provide the basis for the granting of extraordinary relief such as a preliminary injunction in Virginia. Second, Mr. Puckett does not assert that he witnessed any of the alleged "incidents" himself. Instead Mr. Puckett's affidavit is clearly based on hearsay – what he claims he was told by other persons. Evidence of the quality and sufficiency needed to support Point's Motion is required to be "first-hand" evidence – meaning that Mr. Puckett's

testimony be based on events he actually saw and heard himself, not events that he was told about by others. Because Mr. Puckett's affidavit appears not to be based on events that he witnessed first-hand (saw and heard himself), it should not be considered as sufficient evidence by the Commission.

D. Good Faith Negotiations between the Parties have not Begun

Throughout its filings, Point seeks to show that PVEC has refused to engage in good faith negotiations as a basis for invoking the Commission's jurisdiction. PVEC fully intends to engage in good faith negotiations. Before it can do so, however, the parties need to have a meeting of the minds on the current status of any prior contract that one party claims already govern their relationship. Indeed, good faith negotiations over a *new* agreement are impossible if the parties cannot agree whether a prior agreement governs their existing relationship or not. Moreover, the basic contractual dispute between the parties should be resolved to ensure the parties can engage in such good faith negotiations without concerns that the safety of both Point's and PVEC's employees and the public in general is not being threatened by Point's actions.

Accordingly, although there could be issues for the Commission to decide relating to a new pole attachment agreement between the parties in the future,⁴³ those issues will only arise once the current disputes are resolved and the parties are able to begin good faith negotiations on a *new* agreement in earnest. To the extent the Commission has jurisdiction following good faith negotiations once these threshold issues are resolved, a party can seek to invoke that jurisdiction

⁴³ Subject to any jurisdiction that TVA may have over certain aspects of a future agreement as noted in PVEC's Motion to Dismiss and Demurrer. Contrary to Point's over reliance on this issue in its response to that filing, PVEC simply noted the potential overlapping jurisdiction as a further consideration regarding any future agreement between PVEC and Point. The Commission need not address this issue to resolve the current dispute between the parties.

with an appropriate filing, but there is no reason to establish an unreasonable deadline to conclude negotiations that have not yet begun.

CONCLUSION

Powell Valley Electric Cooperative respectfully requests, for the reasons given above, that the Commission deny Point's Motion for Preliminary Injunction.

Respectfully submitted,

POWELL VALLEY
ELECTRIC COOPERATIVE

By:  _____

Counsel

August 12, 2020

Timothy E. Biller
James G. Ritter
HUNTON ANDREWS KURTH LLP
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8756
(804) 344-7907
tbiller@huntonak.com
ritterj@huntonak.com

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2020, a true copy of the foregoing Response of Powell Valley Electric Cooperative to Point's Motion for Preliminary Injunction was sent by electronic mail to Michael J. Quinan (mquinan@t-mia.com) and Cliona Mary Robb (crobb@t-mia.com), Thompson McMullan, 100 Shockoe Slip, 3rd Floor, Richmond, Virginia 23219.



IN THE CHANCERY COURT FOR CLAIBORNE COUNTY, TENNESSEE
AT TAZEWELL

POWELL VALLEY ELECTRIC COOPERATIVE, INC.

Plaintiff,

vs.

Case No. 19548

POINT BROADBAND FIBER HOLDING, LLC

and

SUNSET DIGITAL COMMUNICATIONS, INC.

Defendants.

COMPLAINT

Comes your Plaintiff by and through counsel and for cause of action, would show unto the Court:

PARTIES

1. Plaintiff is Electric Cooperative whose principal place of business is 420 Straight Creek Road, New Tazewell, Tennessee 37825.
2. Defendant Point Broadband Fiber Holding, LLC is a Delaware Limited Liability Company whose principal place of business is 1791 OG Skinner Drive, Suite A, West Point, Georgia 31833, and is subject to service of process through its

THIS DAY OF July, 2020
AT 2:45 PM
Bria Jones, Clerk

registered agent, National Registered Agents, Inc., whose address is 300 Montvue Road, Knoxville, Tennessee 37919.

3. Defendant Sunset Digital Communications, Inc. is a Virginia Corporation whose principal place of business is 333 Fraley Avenue, Duffield, Virginia 24244, and is subject to service of process through its registered agent, Corporation Service Company, whose address is 2908 Poston Avenue, Nashville, Tennessee 37203.

JURISDICTION AND VENUE

4. This Honorable Court has subject matter jurisdiction over this action pursuant to TCA § 16-11-101 et seq. because Plaintiff seeks equitable relief.
5. Claiborne County, Tennessee is the proper venue for this action pursuant to TCA § 20-4-104 because Defendants are not natural persons, and Claiborne County, Tennessee is where a substantial part of the events or omissions giving rise to this cause of action accrued.

FACTS

6. Plaintiff owns, controls, and maintains utility poles in Tennessee and Virginia primarily used to support electrical facilities and distribute electricity:
7. Plaintiff entered into a "Joint Use Pole Agreement" the ("Contract"), dated January 1, 2017, with Defendant Sunset Digital Communications, Inc. to allow Defendant Sunset Digital Communications Inc. to utilize Plaintiff's utility poles in Claiborne, Hancock, Union, Grainger, and Hawkins Counties, Tennessee and Lee, Scott, and Wise Counties, Virginia to develop a high-speed fiber-optic network by installing fiber-optic cable and associated equipment. This Contract is attached as "Exhibit 1."

8. This Contract is unique in the utility industry because Defendant Sunset Digital Communications, Inc. could, by complying with certain provisions in the Contract, install its fiber-optic cable and associated equipment within Plaintiff's "power space," the space containing Plaintiff's electrical equipment as defined on Page 2 of the Contract.
9. The Contract requires that installation of any fiber-optic cable or associated equipment requires—at a minimum—direct supervision by a Journeyman Electric Lineman. Ex. 1, Page 3.
10. Failure to utilize a Journeyman Electric Lineman to directly supervise all personnel operating within Plaintiff's power space is an express condition of Default under the Contract. Ex. 1, Page 4.
11. Before attaching to any of Plaintiff's utility poles, the Contract requires an application to Plaintiff, which Plaintiff may grant or deny based on Plaintiff's determination of economy, safety, its future needs, its contractual obligations, and other factors Plaintiff deems relevant. Ex. 1, Page 4-5.
12. All fiber-optic cable and associated equipment installed on Plaintiff's utility poles must comply with the requirements and specifications of the National Electrical Safety Code and the Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines. Ex. 1, Page 6.
13. Under the Contract, Plaintiff has the sole right and authority to designate where fiber-optic cable and associate equipment would be attached to Plaintiff's utility poles. Ex. 1, Page 6
14. The Parties to the Contract also agreed that the Tennessee Valley Authority is Plaintiff's regulator. Ex. 1, Page 13.

15. Assignment, transfer, sublease, or resale of the rights granted in the Contract require Plaintiff's prior written consent. Failure to obtain Plaintiff's prior written consent is an express condition of Default under the Contract. Ex. 1, Page 19.
16. Transfer of control of Sunset Digital Communications, Inc., would result in—at Plaintiff's option—termination of the Contract, unless Sunset Digital Communications, Inc. provided prompt written notification of the transfer. Ex. 1, Page 20.
17. Under the Contract, violation of any provision or any condition of Default allows Plaintiff to terminate the Contract thirty days after providing written notice of the violation or condition of Default. Ex. 1, Page 21.
18. On January 20, 2020 Plaintiff informed Defendant Point Broadband Fiber Holding, LLC by letter that Plaintiff and Defendant Point Broadband Fiber Holding, LLC did not have a "direct agreement" concerning Sunset Digital's existing equipment on Plaintiff's utility poles. Further, Plaintiff informed Defendant Point Broadband Fiber Holding, LLC that under the Contract all attachments required a permit from Plaintiff before installation, and that a Journeyman Electric Lineman must supervise any fieldwork within Plaintiff's power space.
19. Despite receiving this correspondence, Defendant Point Broadband Fiber Holding, LLC attached to 168 of Plaintiff's utility poles in January 2020, 106 of Plaintiff's utility poles in February 2020, 94 of Plaintiff's utility poles in March 2020, and have continued to the present day to attach to Plaintiff's utility poles without Plaintiff's prior approval or prior knowledge.
20. Plaintiff's counsel provided written notice to Defendants on May 8, 2020 that assignment of the Contract had never been approved, Defendants attached to

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where Defendant Point Broadband Fiber Holding, LLC has created the above conditions.

26. Further, Plaintiff has discovered many of its utility poles leaning due to Defendant Point Broadband Fiber Holding, LLC overloading them.
27. Plaintiff, by letter dated July 27, 2020, informed Defendant Sunset Digital Communications, Inc. that Plaintiff is exercising its right to terminate the Contract under the provisions thereof.

COUNT 1: TRESPASS

28. Plaintiff incorporates the preceding paragraphs as though stated fully herein.
29. Defendants have never obtained written consent from Plaintiff to assign the Contract. Therefore, Defendants are utilizing Plaintiff's utility poles without its permission.

COUNT 2: TRESPASS

30. Plaintiff incorporates Paragraphs 1 through 24 as though stated fully herein.
31. Defendant Point Broadband Fiber Holding, LLC did not properly provide written notice after acquiring Sunset Digital Communications, Inc. Therefore, Defendants are utilizing Plaintiff's utility poles without its permission.

COUNT 3: BREACH OF CONTRACT

32. Plaintiff incorporates Paragraphs 1 through 24 as though stated fully herein.

33. Defendants have conducted fieldwork within Plaintiff's power space without a Journeyman Electric Lineman present to supervise.
34. Defendants have had more than thirty days written notice and have continued this dangerous practice.
35. Therefore, Defendants have committed a terminable breach of the Contract.

COUNT 4: BREACH OF CONTRACT

36. Plaintiff incorporates Paragraphs 1 through 24 as though stated fully herein.
37. Defendants have made hundreds of attachments to Plaintiff's utility poles without obtaining the requisite permits from Plaintiff, causing Plaintiff to be unaware of and unable to inspect the quality of work on its utility poles.
38. Defendants have had more than thirty days written notice and have continued this dangerous practice.
39. Therefore, Defendants have committed a terminable breach of the Contract.
40. Plaintiff reserves the right to amend this Complaint.

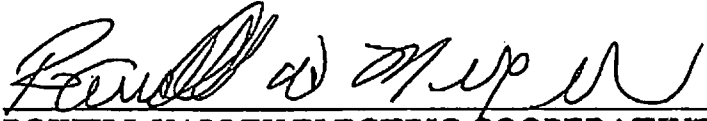
PREMISES CONSIDERED, PLAINTIFF PRAYS:

- A. That process issue and be served upon Defendants requiring them to file a response.

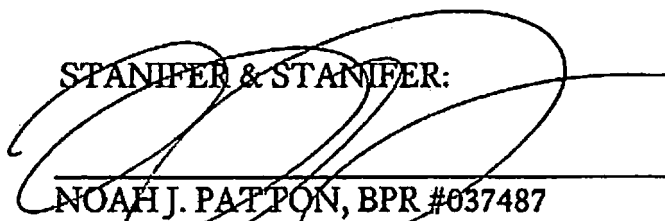
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- B. That this Court issue a Temporary Injunction preventing Defendants from accessing or conducting operations of any type on Plaintiff's utility poles and continuing to endanger Plaintiff's employees and the public.
- C. That this Court issue a Permanent Injunction preventing defendants from accessing or conducting operations of any type on Plaintiff's utility poles and continuing to endanger Plaintiff's employees and the public.
- D. That this Court determine that no contract exists between Plaintiff and Defendants
- E. Or, in the alternative to D., that this Court determine that Defendants have breached the Contract and been given sufficient notice for Plaintiff to terminate the Contract.
- F. That Defendants be ordered to pay Plaintiff damages for repairing, removing Defendants' equipment or otherwise restoring Plaintiff's utility poles to a safe condition in compliance with the requirements and specifications of the National Electrical Safety Code and the Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines.
- G. That Defendants be ordered to pay Plaintiff its reasonable attorney's fees, court costs, and other costs associated with bringing this action.
- H. That the Court award Plaintiff such other further and general relief to which it

may be entitled.

This 28th day of July, 2020.


POWELL VALLEY ELECTRIC COOPERATIVE, INC.
By: RANDELL MEYERS, GENERAL MANAGER
AND CHIEF EXECUTIVE OFFICER
Plaintiff

STANIFER & STANIFER:

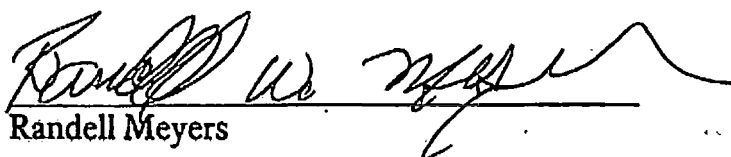

NOAH J. PATTON, BPR #037487
ATTORNEY FOR PLAINTIFF
P.O. Box 203, 1735 Main Street
Tazewell, Tennessee 37879
(423) 626-7223

OATH

STATE OF TENNESSEE

COUNTY OF CLAIBORNE

Randell Meyers, General Manager and Chief Executive Officer of Powell Valley Electric Cooperative, Inc. after being duly sworn as required by law, makes oath that the statements made in the foregoing Complaint are true to the best of his knowledge, information and belief.

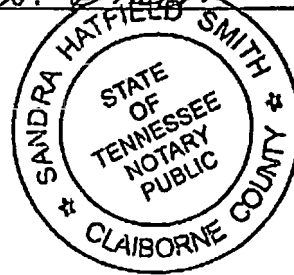

Randell Meyers

Sworn to and subscribed before me this the 28th day of July 2020.

Sandra H. Smith
Notary Public

My Commission Expires:

5/21/2024



COST BOND

We hereby acknowledge ourselves surety for the costs in this cause not to exceed the sum of One Thousand Dollars (\$1,000.00).

[Signature]
Stanifer and Stanifer

[Signature]
Noah J. Patton

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and exact copy of the foregoing Complaint has been properly mailed by certified mail, postage prepaid, to National Registered Agents, Inc., whose address is 300 Montvue Road, Knoxville, Tennessee 37919 and Corporation Service Company, whose address is 2908 Poston Avenue, Nashville, Tennessee 37203 this 28th day of July, 2020.



NOAH J. PATTON
STANIFER & STANIFER
Attorney for Plaintiff

EXHIBIT 1

JOINT USE POLE AGREEMENT BETWEEN
POWELL VALLEY ELECTRIC COOPERATIVE, INC

AND

SUNSET DIGITAL COMMUNICATIONS, INC.

DATED JANUARY 1, 2017

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Contract No. 1030

JOINT USE POLE AGREEMENT
BETWEEN
POWELL VALLEY ELECTRIC COOPERATIVE, INC.
AND
SUNSET DIGITAL COMMUNICATIONS, INC.

THIS AGREEMENT, made January 1, 2017, between POWELL VALLEY ELECTRIC COOPERATIVE, INCORPORATED, NEW TAZEWELL, TENNESSEE, hereinafter called Licensor, party of the first part, and SUNSET DIGITAL COMMUNICATIONS, INC., 333 Fraley Ave., Duffield Virginia 24244, a Virginia corporation, hereinafter called Licensee, party of the second part.

W I T N E S S E T H:

WHEREAS, Licensee has received funding for the development of a high-speed fiber optic network (the "Network") to serve and operate in the Tennessee counties of Claiborne, Hancock, Union, Grainger, and Hawkins and in Virginia in the counties of Lee, Scott and Wise that includes all Cable Plant, Fiber, Dark Fiber, conduit, and associated equipment; and,

WHEREAS, Licensee wishes to deploy its network to provide fast, reliable and affordable network access in furtherance of economic development within the above referenced counties (the "Service Area"); and,

WHEREAS, Licensee acknowledges having certain dielectric fiber optic cable and associated equipment located within the Licensor's "power space" on the Licensor's poles, power space being herein defined as the area extending 40 inches below the Licensor's conductors (phase, neutral, secondary-not in conduit), transformers, or other power line equipment and devices; and,

WHEREAS, Licensee has need to access its cable and equipment for the purposes of operations, maintenance, and/or new construction.

In providing such access to its customers, Licensee will need to erect and maintain aerial cables, wires and associated appliances throughout the area to be served and desires to attach such cables, wires and appliances to poles of Licensor; and

WHEREAS, subject in all instances to considerations of Licensor's service requirements including considerations of economy and safety (which requirements, together with its obligations under joint-use agreements with companies or municipalities providing communication service to the public or fire alarm systems shall be paramount to any permits granted hereunder), Licensor is willing when it may lawfully do so to permit the attachment of Licensee's cables, wires, and appliances to poles of Licensor for use

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in furnishing the high speed fiber optic network access service proposed by Licensee.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. The Licenser grants permission to the Licensee, for the Licensee's qualified employees, qualified contractors, or qualified assigns to perform work within the Licenser's power space. It is expressly understood that such qualified person(s) performing such work must be duly trained and currently certified as a "journeyman electrical lineman" as commonly recognized and accepted within the electric industry. A competent, qualified "non-journeyman electrical lineman" under the direct field supervision of a journeyman electrical lineman may be used. Absent such qualifications, all employees, contractors, or assigns of the Licensee are prohibited from entering into the Licenser's power space. In the absence of such qualified persons the Licensee may use, at Licenser's convenience, qualified Licenser personnel and reimburse the Licenser for its costs, including applicable overheads. All conductors and equipment placed within the Licenser's Power Space shall be properly insulated for such use. The Licensee

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agrees that its use of unqualified persons to perform work in the Licensor's power space constitutes default of this Joint Use Pole Agreement. The Licensee agrees to assume full and total responsibility for its employees, contractors, or assigns performing work in the Licensor's power space and to indemnify and hold harmless the Licensor from any claims, damages, injury, or death that may arise from such work. This license is granted for the purpose of permitting the use of Licensor's wood poles used in the electric distribution system by Licensee in the furnishing of high-speed fiber optic network access service to Licensee's patrons in the area set out above.

2. This license also permits the attachment of facilities for, or transmission of, other lawful signals which Licensee is legally authorized to transmit over the high-speed fiber optic network facilities. Licensee shall not attach facilities for any other purpose to Licensor's poles, and shall not use facilities attached hereunder for any other purpose or for any unlawful purpose.

3. Before making attachment to any pole or poles of Licensee or any pole of any utility of which Licensor has electrical attachment, Licensee shall make application and receive a permit therefor with respect to each pole in the form of Exhibit A, hereto attached and made a part hereof.

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Upon granting such permit, Licensor agrees that Licensee is permitted to make the attachments thereby covered, subject to the terms and conditions in this agreement. In granting or denying the permit, Licensor reserves the sole right to determine whether a grant would affect any of Licensor's electric facilities including, but not limited to, all questions of economy, safety and future needs of Licensor and any contractual obligations of Licensor to any other public utilities, any governmental bodies or other entities which may be entitled to use of or control of use of such pole.

4. Licensee shall, at its own expense, make and maintain said attachments in safe condition and in good repair, and in a manner suitable to Licensor and compatible with the use of said poles by Licensor, and other owners of facilities using said poles, and in a manner that will not interfere with the maintenance and use of facilities thereon or which may from time to time be placed thereon. Licensee shall at any time, at its own expense, upon notice from Licensor, relocate or replace its facilities placed on said poles, and transfer them to substituted poles, or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said poles or the facilities

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thereon or those which may be placed thereon. Licensee shall, on demand, reimburse Licensor for the expense thereby incurred.

5. Licensee's cables, wires and appliances, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of the latest revision of the National Electrical Safety Code, the Safety Rules for the Installation and Maintenance of Electric Supply and Communication Lines, as the same may be amended from time to time, and in compliance with any rules or orders now in effect or that may hereafter be issued by the POWELL VALLEY ELECTRIC COOPERATIVE or other authority having jurisdiction. The location of Licensee's attachments to be made on each pole will be designated by Licensor, in accordance with Licensor Drawing No. 1 and South Central Bell Drawing No. 2 attached, and the location of any attachment may be re-designated from time to time.

Licensee shall reimburse Licensor for all costs, including administrative charges and transportation costs incurred while working with Licensee and while working out approvals for initial or rearrangements of attachments. Licensee agrees that all of its facilities will meet the standards and requirements as set out in Exhibit B attached hereto and made a part hereof.

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Notwithstanding the aforesaid mentioned use of ADDS cable and associated equipment used in the Licensor's "Power Space", Licensee will typically require one foot of pole space.

6. Where accommodation of Licensee's desired attachments may be made on present poles of Licensor by rearranging Licensor's facilities thereon, Licensee will compensate Licensor in advance for the full estimated expense of completing such rearrangements. Licensee will also in advance reimburse the Owner or Owners of other facilities attached to said poles for any expenses incurred by them in rearranging such facilities. Licensee is prohibited from tampering with, interfering with, removing or relocating any electrical facilities on any pole covered by this contract.

7. In the event that any pole of Licensor to which Licensee desires to make attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, Licensor will notify Licensee of the changes necessary to provide an adequate pole, together with the estimated cost thereof to Licensee. Such cost shall be an amount sufficient to reimburse Licensor for the estimated additional cost of the new pole over and above the cost of a pole adequate for Licensor's own purpose, the

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sacrificed life value of the pole removed, the cost of removal less any salvage recovery, and the expense of transferring Licensor's facilities from the old to the new pole. The Cooperative may, at its sole discretion, "permanently transfer, Licensee's cables, wires, conductors, guys, etc. to the new poles and bill the Licensee at the rate of \$60.00 per guy, conductor, wire, etc. transferred. This rate is subject to change upon mutual agreement of the parties or the practice may be discontinued at any time upon notice by either party.

Should any pole to which Licensee attaches become inadequate to support additional required facilities of Licensor or other users by reason of Licensee's attachment thereto, Licensor will notify Licensee in writing and will include the estimated costs of the changes necessary to provide an adequate pole. Within 30 days after such notice, Licensee shall indicate in writing to Licensor whether it will promptly remove its facilities from such pole in order to accommodate Licensor's requirements or whether it desires Licensor to make the necessary changes to provide an adequate pole at Licensee's expense. If it desires Licensor to make changes, Licensee shall reimburse Licensor in advance for the entire estimated additional cost thereof as set forth above.

Licensee will also in advance reimburse the Owner or Owners of other facilities attached to said pole to be rearranged or replaced for any expense incurred by it or them in rearranging or transferring such facilities to the new pole.

The first CATV or fiber optic organization to require a change-out of pole, must absorb the total cost of the project. If a second CATV or fiber optic organization attaches to the same pole within a period of twenty-four months, then this second organization must reimburse the original attachee fifty percent of the total original cost of labor and material for the original change-out. After twenty-four months, the attachment will be handled as a routine attachment.

If the first CATV or fiber optic organization attaches a pole in the best and most proper manner and there is no suitable space for the second CATV or fiber optic organization, then the second CATV or fiber optic organization must request the pole be replaced for a taller pole and must absorb the total cost of the change-out. If the original attachee has agreed to a space waiver, then he must absorb his fair share of the expense.

8. Licensor reserves to itself, its successors and assigns, the right to maintain its poles and to operate its

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facilities thereon in such manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption to service of Licensee or for interference with the operation of the cables, wires and appliances of Licensee arising in any manner out of the use of Licensor's poles hereunder.

9. Prior to execution of this license agreement, Licensee shall have submitted to Licensor's evidence, satisfactory to Licensor, of its authority to erect and maintain its facilities within public streets, highways and other thoroughfares and shall secure any necessary consent from federal, state or municipal authorities or from the owners of property to construct and maintain facilities at the locations of poles of Licensor which it desires to use.

Licensee shall indemnify and reimburse Licensor for all loss and expense which result from claims of governmental bodies, owners of property or others that Licensee has not a sufficient right or authority for placing and maintaining Licensee's facilities on Licensor's poles or elsewhere.

Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT

OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY OR EASEMENTS

ENTITLE LICENSEE TO ACCESS THE PROPERTY UNDERLYING

LICENSOR'S DISTRIBUTION POLES.

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10. Licensor, because of the importance of its service, reserves the right to inspect each new installation of Licensee on its poles and in the vicinity of its lines or appliances and to make periodic inspections, as plant conditions may warrant. Such inspections, or Licensor's lack of inspection, shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this agreement.

11. The Licensee shall at its own expense and to the satisfaction of the Licensor place guys and anchors to sustain any unbalanced loads caused by the Licensee's attachments. When, in unusual circumstances, the Licensee determines that it is necessary or desirable for it to attach its guys to anchors owned by the Licensor, it may make application to do so in a manner similar to that outlined in paragraph 3 above for application to make pole attachments. In such circumstances all the provisions of paragraph 3, 4, 5, 6, 7, 8, 9 and 10, above, applicable to poles shall also be separately applicable to anchors. The Licensee shall pay to the Licensor a rental for the use of each of the Licensor's anchors to which attachments are made. The amount of the rental per anchor and the method of payment shall be identical with, but in addition to, the

amount and method for poles as described in paragraph 13 following.

12. When the Licensor is requested by Licensee to install grounds or make connections to Licensor's system neutral, Licensee shall, upon demand, reimburse Licensor for the expenses thereby incurred.

13. Licensee shall pay to Licensor, for attachments made to poles under this agreement, a rental at the rate per pole per year as follows: Year 2011 - \$18.25 per pole per year; Years 2012-2016 - \$20.00 per pole per year; (Prior rates are stipulated for back billing purposes should such apply) and \$25 per anchor on initial installation only. Said rental shall be payable annually at the end of each year on the first day of January of the following year during which this agreement remains in effect, based upon the number of poles on which attachments are being maintained on the first day of December of each respective year;

Licensee shall pay to the Licensor, for Attachments made to poles under this Agreement, a rental at the rate of \$24.37 per pole per year, which is the rate effective as of January 1, 2017 and which shall remain in effect until December 31, 2017. Payments shall be made within thirty (30) days of Licensee's receipt of Licensor's invoice for

such Attachment Fee, as set forth in herein. The Parties understand and agree that the Tennessee Valley Authority is the Licensor's regulator and may determine a different rate is appropriate. In the event that TVA requires a different rate (the "TVA rate"), the TVA rate shall be so adjusted and applied from and after the effective date of the TVA rate.

Where permitted by the owner, there shall be a onetime charge by the owner to the licensee of \$25.00 for the attachment of the licensee's guy to the owner's anchor.

A joint field survey shall be made to establish the number of attachments owned by each party at the date of execution of this agreement. This survey shall be completed within 180 days following the date of execution of this agreement. Future surveys will be made every five years when requested by either party to this agreement.

Adjustment of Attachment Fee. Upon the expiration of the rate periods set forth above, the then applicable rate shall be escalated, effective January 1, 2018 and annually thereafter, based upon the percentage increase, if any, in the Handy-Whitman Index (South Atlantic Region, FERC Account 364, Line 44, Poles, Towers and Fixtures) ("HWI") between the two preceding July 1 index numbers. In the

event that TVA requires that a different rate should be used, the TVA rate shall be used.

For the purpose of determining the change, absent satisfactory evidence to the contrary, or in the event of a joint field audit of joint use poles, the unlicensed use shall be treated as having existed on a pro-rated basis since the last field inventory of Licensee's attachments. In the absence of a field audit, such unlicensed use shall be treated as having existed on a uniformly pro-rate basis since January 1, 2011. The Licensee agrees to pay the Licensor for each of its unreported attachments on a fully pro-rate basis at the rate in effect each year back to January 1, 2011 (subject to a more recent audit). An interest charge equal to the cooperative's weighted average of its current long term debt (compounded annually) will be applied to the net amounts of any back bills for unreported attachments.

14. Licensee shall exercise special precautions to avoid damage to facilities of Licensor and of others supported on said poles and hereby assumes all responsibility for any and all loss for such damage. Licensee shall make an immediate report to Licensor of the occurrence of any damage and hereby agrees to reimburse

Licensor and such others for the expense incurred in making repairs.

15. Should Licensee attach any of its facilities to poles not covered by this agreement or should Licensee attach any of its facilities to poles that the Licensee has a joint use agreement, it shall maintain proper clearance between such equipment and communication lines and street lighting wires and shall otherwise install, maintain and remove the equipment on such poles in such manner as to satisfy the requirements of paragraph 5 hereof with respect to safety, good workmanship, and avoidance of hazard.

16. Licensee understands and agrees that the erection of placement, presence, maintenance, use and removal of its facilities in the vicinity of the Licensor's facilities at any and all locations increases the exposure of Licensor for damage to or loss of its property and the property of third persons, and for injury to or death of its employees and the employees of its contractors and subcontractors, and to third persons, and that Licensor's exposure to claims, demands and suits for any or all of the above is increased to a greater degree than exists in the absence of Licensee's facilities in the vicinity of Licensor's facilities at any location.

As a necessary consideration to Licensor's covenants herein contained, Licensee agrees further to and shall indemnify, protect and save harmless and insure Licensor from and against any and all liability (including contractual liability of Licensor to other users or Licensor's poles) costs, attorney's fees incurred, expenses, claims and demands, including payment made under any Workmen's Compensation Laws or under any plan for employees' disability and death benefits, for damages to property and/or injury to or death of persons, including but not limited to injuries to and death of employees of Licensee, employees of Licensor and employees of contractors and subcontractors of either Licensor or Licensee, when such damage to property or injury to or death of persons arises out of, results from or is caused by: (1) the existence of electric wires and equipment in place at the time of the execution of this contract, or (2) the erection, maintenance, presence, use or removal of Licensee's attachments, or (3) the proximity of the respective cables, wires, apparatus and appliances of the parties hereto, or (4) any act or omission of Licensee or its employees or its contractors, subcontractors or the employees of either, or (5) Licensee's breach of any part of this agreement; regardless of whether or not any such

damage to property or injury to or death of persons results from Licensee's negligence. The indemnity and "hold harmless" provision of this contract shall be applicable regardless of whether such damages to property or injury to or death of persons is due in part to or contributed to by the active or passive concurrent or contributory negligence of Licensor, its employees or agents, but nothing herein is intended to require Licensee to indemnify and hold harmless Licensor for any damage to property or injury to or death of persons which has as its only proximate cause the sole negligence of Licensor.

17. Licensee shall carry insurance, in such forms and in such companies as are satisfactory to Licensor, with contractual endorsements necessary to protect the POWELL VALLEY ELECTRIC COOPERATIVE from and against any and all claims, demands, action, judgments, costs, expenses and liabilities of every name and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage, and so as to insure the undertaking of Licensee to Licensor under paragraph 15 hereof. The amounts of such insurance against liability due to damage to property, liability due to or death of persons, and total liability due to any one accident shall be one million dollars (\$1,000,000.00). Licensee shall also carry

such insurance as will protect it from all claims under any Workmen's Compensation Laws in effect that may be applicable to it. Licensee shall also furnish a Performance Bond in the sum of N/A dollars (\$ N/A), for the performance of this agreement and as a guarantee to the Licensor for all costs, including but not limited to costs incurred for removing Licensee's attachments from Licensor's poles in the event that Licensee shall cease and/or stop operation. All insurance required shall be procured before any attachment is made by Licensee with Licensor's poles and shall remain in force for the entire life of this agreement and the company or companies issuing such insurance shall be approved by Licensor. Licensee shall submit to Licensor copies of such insurance policies issued under this agreement and the certificate of each insurance carrier that it will not cancel or change any such policy of insurance except after sixty (60) days' notice to the POWELL VALLEY ELECTRIC COOPERATIVE and all such policies shall be replaced by Licensee with similar policies prior to their termination, or effective date of cancellation. The taking out of such insurance shall not relieve or limit Licensee from its liability to Licensor under this contract, but shall only be added security. All

of the policies evidencing such insurance shall include Licensor as a named insured therein along with Licensee.

18. Licensee may at any time remove its attachments from any pole of Licensor, but shall immediately give Licensor written notice of such removal in the form of Exhibit C, hereto attached and made a part hereof. No refund of any rental will be due on account of such removal. Should Licensee thereafter again wish to make attachments to such pole, it shall make application and receive a permit therefore as provided in paragraph 3 hereof.

19. Upon notice from Licensor to Licensee that the use of any pole is forbidden by municipal authorities or property owners, the permit covering the use of such pole shall immediately terminate and the cables, wires and appliances of Licensee shall be removed promptly from the affected pole.

20. Licensee shall not assign, transfer, sublease or resell the rights of attachment hereby granted to it, or the right to use the facilities so attached to Licensor's poles, without prior consent in writing of Licensor. The assignment, transfer, sublease or resale by Licensee of the rights of attachment hereby granted to it or the right to use the facilities so attached without written consent of

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Licensors, shall constitute a default of Licensee's obligations and, notwithstanding any other provision of this agreement, Licensors may at its option forthwith terminate this agreement or any permit issued hereunder. Where control of Licensee is transferred, whether by sale of stock or otherwise, Licensee shall promptly notify Licensors in writing. Failure of Licensee to give such notice shall be cause for termination of this agreement, at the option of Licensors, as provided hereinabove in this paragraph.

21. Licensee shall not, without the prior written consent of Licensors, use any of its facilities attached to Licensors' poles for any purpose other than that provided for in paragraph 1 and 2 hereof. Whenever, in the reasonable judgment of Licensors, Licensee has used its facilities for any purpose not authorized herein, Licensors shall forthwith notify Licensee. Upon receipt of such notice, Licensee shall as promptly as practicable (and in no event later than twelve hours after receipt of such notice) cease such use complained of in the notice. Failure to do so or repeated unauthorized use shall constitute a default of Licensee's obligations and, notwithstanding any other provision of this agreement,

Licensors may at its option forthwith terminate this agreement.

22. Licensee shall indemnify, save harmless and insure Licensors with respect to all program material transmitted over Licensee's high-speed fiber optic network system from and against any and all claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's equipment whether arising from the use of Licensee's equipment in combination with Licensors's poles or otherwise.

23. Except as otherwise expressly provided in this agreement, if Licensee shall fail to comply with any of the provisions of the agreement including the specifications hereinbefore referred to, or default in any of its obligations in this agreement and shall fail within thirty (30) days after written notice from Licensors to correct such default or noncompliance, Licensors may, at its option, forthwith terminate this agreement or the permit covering the poles as to which such default or noncompliance shall have occurred.

In the event that Licensor terminates this agreement as to any permit or permits granted hereunder, Licensee shall within thirty (30) days remove its affected facilities, and in the event that Licensee does not remove its facilities within thirty (30) days, Licensor may do so, the removal costs to be borne, in any event, by Licensee.

24. Bills for expense and other charges under this agreement, including those advance payments specifically covered herein, shall be payable within thirty (30) days after presentation. Nonpayment of bills shall constitute a default of this agreement. Such billings, including pole rentals, will be subject to the Cooperative's prevailing finance charge rates for any amounts unpaid by their due dates.

25. Failure to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms of conditions, but the same shall be and remain at all times in full force and effect.

26. Nothing herein contained shall be construed as affecting the rights or privileges conferred by Licensor, by contract or otherwise, to others, not parties to this agreement, to use any poles covered by this agreement; and Licensor shall have the right to continue and extend such

rights or privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

27. No use, however, extended, of Licensor's poles, under this agreement, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to maintain any of said poles for a period longer than demanded by its own service requirements. This agreement confers no exclusive right on Licensee for the use of Licensor's poles or any particular space on Licensor's poles; and Licensor retains the full right and discretion to grant, without notice, pole attachment or other use privileges as to any and all of its present or future poles in the area covered by this agreement to any other person or persons for any purpose including but not limited to community antenna television or high-speed fiber optic network service.

28. Notwithstanding anything contained herein, Licensee is not hereby authorized to make any use of its facilities which would violate any duly filed tariffs of Licensee nor shall any provision of this agreement be

construed to require Licensor to do, or perform, or permit any act, which would violate any of its duly filed rates.

29. This agreement shall become effective upon its execution and if not terminated in accordance with other provisions contained herein shall terminate on December 31, 2021, with an option to renew said contract at rates in accordance with Article 13 above for one year. All existing agreements between the parties hereto for joint use of poles are by mutual consent hereby abrogated and superseded by the agreement.

30. Licensee may be required to furnish satisfactory evidence of contractual insurance coverage in an amount which in the judgment of the Licensor, is required to guarantee the payment of any sums which may become due to Licensor for rentals, or for work performed for the benefit of Licensee under this agreement including the removal of attachments as provided for herein. The amount of the contractual insurance coverage is subject to be increased or decreased whenever, in the judgment of the Licensor, such action is deemed advisable from a standpoint of protecting the payments due Licensor as set forth above.

31. Subject to the provisions of paragraph 19 hereof, this agreement shall extend to and bind the successors and assigns of the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have caused
these presents to be duly executed the day and year first
above written.

ATTEST: POWELL VALLEY ELECTRIC COOPERATIVE, INC.

 
GENERAL MANAGER/CEO

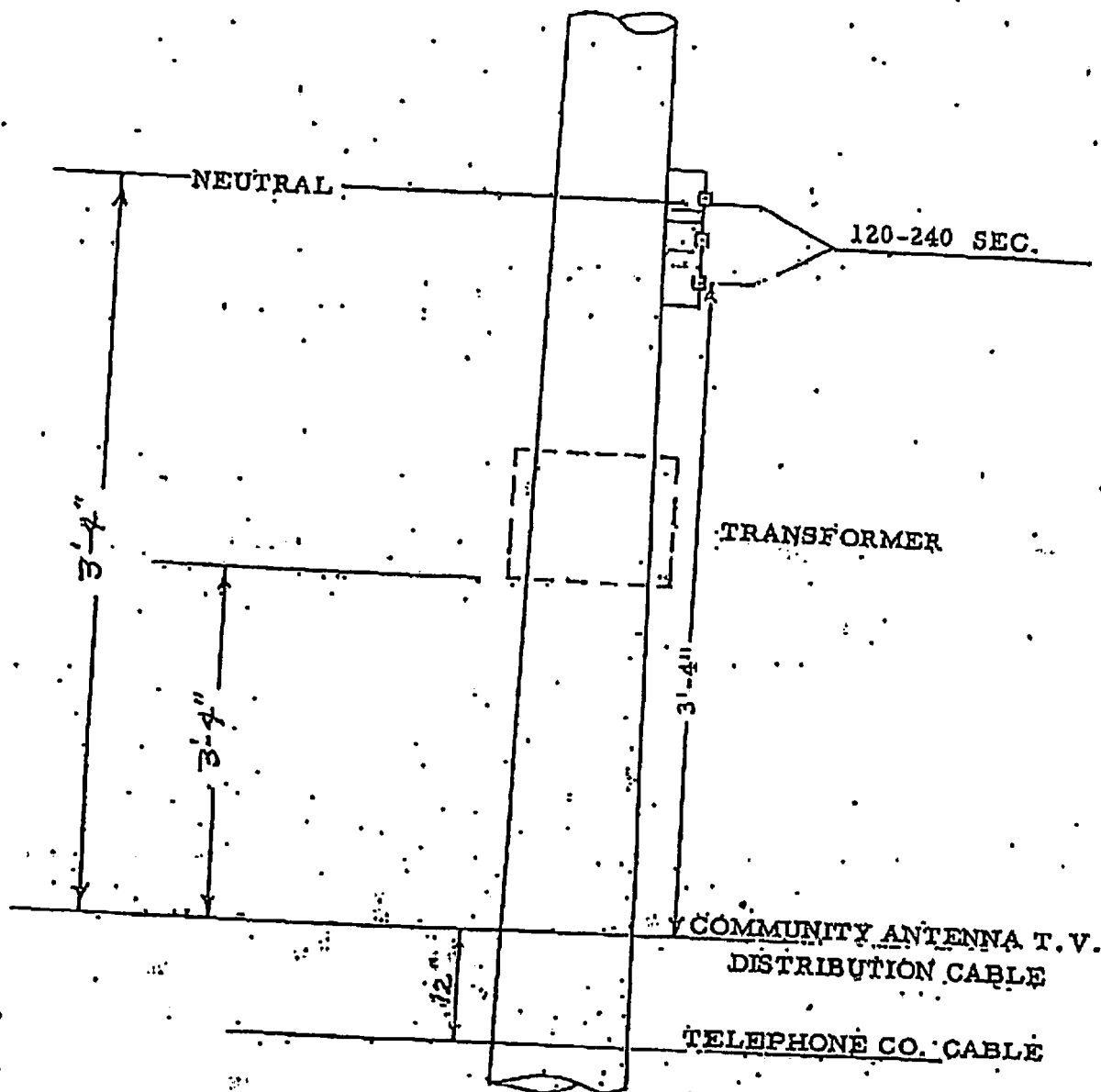
ATTEST: SUNSET DIGITAL COMMUNICATIONS, INC.

 
Title: Vice President } COO

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SEE ATTACHMENTS NO. 1 AND NO. 2

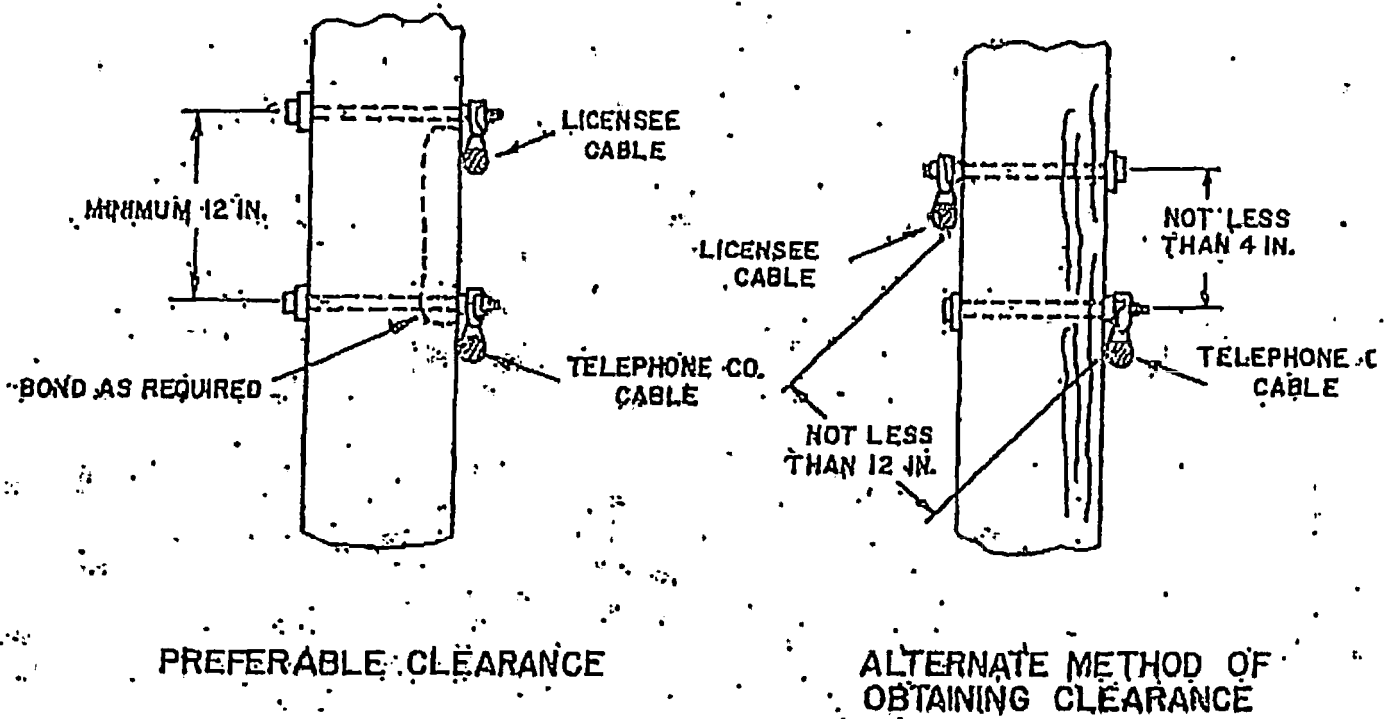
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* SEE DWG. NO. 2 (TELEPHONE CO. ATTACHMENT) ALTERNATE
TO BE USED ONLY TO PREVENT CHANGE OUT OF POLE

DWG. NO. 1

200810197



TELEPHONE COMPANY ATTACHMENT

DWG. NO. 2

200810197

EXHIBIT A
APPLICATION AND PERMIT

Powell Valley Electric Cooperative, Inc

In accordance with the terms of Agreement dated _____, _____, application is hereby made for license to make attachments to the following poles and/or anchors:

Location: _____
(City & State)

Pole Number* Location

*For anchors prefix pole number
with "ANC" by _____

Title _____

License granted _____, _____, subject to your approval of the following changes and rearrangements at an estimated cost to you of \$ _____ payable in advance.

Powell Valley Electric Cooperative, Inc.

by _____

Title _____

The above changes and rearrangements approved and advance payment therefore enclosed.

by _____ Permit No. _____

Title _____ Total Poles _____

Total Anchors _____

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EXHIBIT B

Cable Specifications

Licensee agrees that all feeder and/or distribution cable used by Licensee in establishing the outside distribution system will be one of the following types. Cable attached to poles with the pole bolts (backbone cable) will be All Dielectric Self Supporting (ADSS) cable. This cable will have a jacket that is tested to an electric field potential of 25 kV to resist tracking (dry band arcing). Cables will be specified to meet sag, span, and load requirements for heavy icing conditions. Drops installed by Licensee shall consist of dielectric cable tested to 12 kV electric field potential with the exception of drop cables that will be used underground along any portion of the installed length. A small conductor is included to facilitate underground locating. All cable is fiber optic and radiation specifications do not apply.

EXHIBIT C

Notification of Removal by Licensee

 Powell Valley Electric Cooperative, Inc.

In accordance with the terms of Agreement dated
 _____, _____, kindly cancel from your records the
 following poles and/or anchors covered by Permit No.
 _____ from which attachments were removed on
 _____.

Location _____
 (City and State)

Pole*
 Number Location

*For anchors prefix
 pole number with "ANC" By _____

Title _____
 (Licensee)

Notice Acknowledged

 Powell Valley Electric Cooperative, Inc.

By _____

Title _____
 (Licensor)

Notice No. _____

Total Poles Discontinued _____

Total Anchors Discontinued _____

IN THE CHANCERY COURT FOR CLAIBORNE COUNTY, TENNESSEE
AT TAZEWELL

POWELL VALLEY ELECTRIC COOPERATIVE, INC.

Plaintiff,

vs.

Case No. 19548

POINT BROADBAND FIBER HOLDING, LLC

and

SUNSET DIGITAL COMMUNICATIONS, INC.

Defendants.

MOTION FOR TEMPORARY INJUNCTION

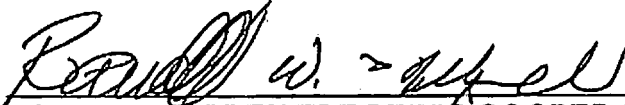
Comes your Plaintiff by and through counsel and pursuant to Rule 65.04 of the Tennessee Rules of Civil Procedure, moves the Court for a temporary injunction enjoining and restraining Defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them, from accessing or performing operations of any type upon utility poles owned, controlled, or maintained by Plaintiff. As grounds for this motion, as more fully set forth in Plaintiff's verified Complaint, Plaintiff would show this Court as follows:

THIS DAY OF July, 2020
AT 2:45 PM
PRA. JONES, C. C. III

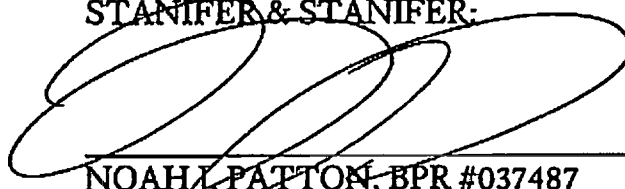
1. That unless enjoined by this Court, Defendants will perform the acts referred to above;
2. Such action by the Defendants will result in irreparable injury, loss, and damage to Plaintiff as more fully appears in Plaintiff's verified Complaint;
3. The issuance of the restraining order will not cause undue inconvenience or loss to Defendants, but will prevent irreparable injury to Plaintiff.
4. Plaintiff tenders and offers to furnish such security as the Court may deem proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined by such restraining order.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CASE.

This 28th day of July, 2020.


POWELL VALLEY ELECTRIC COOPERATIVE,
By: RANDELL MEYERS, GENERAL MANAGER
AND CHIEF EXECUTIVE OFFICER
Plaintiff

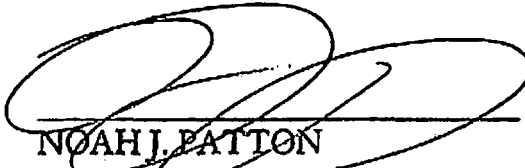
STANIFER & STANIFER:


NOAH J. PATTON, BPR #037487
STANIFER & STANIFER
ATTORNEY FOR PLAINTIFF
P.O. Box 203, 1735 Main Street
Tazewell, Tennessee 37879
(423) 626-7223

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and exact copy of the foregoing Motion has been properly mailed by certified mail, postage prepaid, to National Registered Agents, Inc., whose address is 300 Montvue Road, Knoxville, Tennessee 37919 and Corporation Service Company, whose address is 2908 Poston Avenue, Nashville, Tennessee 37203 this 28th day of July, 2020.


NOAH J. PATTON
STANIFER & STANIFER
Attorney for Plaintiff

IN THE CHANCERY COURT FOR CLAIBORNE COUNTY, TENNESSEE
AT TAZEWELL

POWELL VALLEY ELECTRIC COOPERATIVE, INC.

Plaintiff,

vs.

Case No. 19548

POINT BROADBAND FIBER HOLDING, LLC

and

SUNSET DIGITAL COMMUNICATIONS, INC.

Defendants.

NOTICE

TO: Point Broadband Fiber Holding, LLC
and Sunset Digital Communications, Inc.

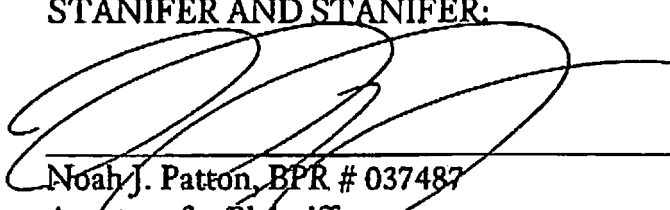
Please take notice that I will appear before the Honorable Elizabeth C. Asbury, sitting for the Chancery Court of Claiborne County, Tennessee on the 12th day of August, 2020, at 9:00 a.m., or as soon thereafter at the convenience of the Court for a hearing on all pending Motions in this matter.

This 28th day of July, 2020.

THIS 28th DAY OF July 2020
AT 2:45 PM
Wita Jones, Clerk

16 JUL 2020

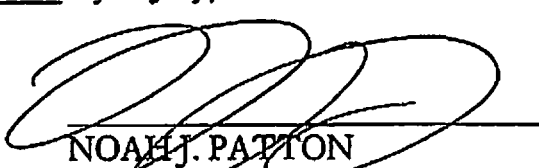
STANIFER AND STANIFER:



Noah J. Patton, BPR # 037487
Attorney for Plaintiff
P.O. Box 217, 1735 Main Street
Tazewell, Tennessee 37879
(423) 626-7223

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and exact copy of the foregoing Notice has been properly mailed by certified mail, postage prepaid, to National Registered Agents, Inc., whose address is 300 Montvue Road, Knoxville, Tennessee 37919 and Corporation Service Company, whose address is 2908 Poston Avenue, Nashville, Tennessee 37203 this 28th day of July, 2020.



NOAH J. PATTON
STANIFER & STANIFER
Attorney for Plaintiff

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF

SUNSET DIGITAL COMMUNICATIONS (DE) LLC
(USED IN VA BY: SUNSET DIGITAL
COMMUNICATIONS, LLC),
D/B/A POINT BROADBAND

CASE NO. PUR-2020-00143

Affidavit of Randell W. Meyers

1. My name is Randell Meyers. I am employed by Powell Valley Electric Cooperative ("PVEC") as General Manager and Chief Executive Officer. I have been employed by PVEC for 56 years.
2. PVEC is a consumer-owned utility that provides electric service to over 32,000 consumers in northeast Tennessee and southwest Virginia. PVEC maintains more than 3,500 miles of electric line in its distribution and service infrastructure.
3. In my work as General Manager and Chief Executive Officer for PVEC, I am responsible for the service and operation of PVEC's electric system, including our distribution and service infrastructure.
4. I am familiar with the Joint Use Pole Agreement between Powell Valley Electric Cooperative, Inc. and Sunset Digital Communications, Inc., (Contract No. 1030), dated January 1, 2017 ("Joint Use Pole Agreement").
5. I am aware that Sunset Digital Communications, Inc. was purchased by Point Broadband ("Point"), and that Point is operating the former Sunset Digital Communications, Inc. fiber network ("Sunset Fiber Network"), much of which is attached to electric poles owned by PVEC.
6. I am also aware that Point asserts that it has acquired the rights and obligations of Sunset Digital Communications, Inc. under the Joint Use Pole Agreement.
7. There are approximately 13, 619 points of attachment of the Sunset Fiber Network on PVEC utility poles; 12, 616 on PVEC poles in Tennessee, and 1003 on PVEC poles in Virginia.

8. The Sunset Fiber Network has facilities strung inside the “power space”¹ on PVEC poles. Prior to January, 2020, PVEC determined that Point was accessing PVEC’s electric poles, and conducting operations both within and outside of the power space on PVEC’s poles, in violation of several provisions of the Joint Use Pole Agreement.
9. Point, through its employees and/or agents and contractors, was making attachments to PVEC poles without notifying PVEC in advance, making an application to PVEC for an attachment, or receiving PVEC’s permission via a permit to make the attachment. Accessing PVEC’s electric poles without notice or permission, working in the power space on those poles without notice or permission, and making attachments to PVEC’s poles without engineering oversight and input from PVEC constitute dangerous and unsafe activity, violates generally applicable engineering principles and places the reliability and integrity of PVEC’s distribution system at risk. Such activity also endangers Point’s employees and/or agents and contractors, PVEC’s employees, PVEC’s customers and the general public.
10. Point was conducting the activities described in Paragraph 8 above, including specifically working in the power space on PVEC’s electric poles, using personnel, including its employees and/or agents and contractors, who were not duly trained nor certified as a journeyman electrical linemen, nor were Point’s personnel, including its employees and/or agents and contractors, under the direct field supervision of a journeyman electrical lineman. Accessing PVEC’s electric poles with non-qualified persons, having non-qualified persons working in the power space on those poles, and having non-qualified persons making attachments to PVEC’s constitute dangerous and unsafe activity, violates generally applicable engineering principles and puts the reliability and integrity of PVEC’s distribution system at risk. Such activity also endangers Point’s employees and/or agents and contractors, PVEC’s employees, PVEC’s customers and the general public.
11. On January 20, 2020, I wrote to Mr. Todd Holt, Chief Executive Officer of Point, and directed him to specific Sections of the Joint Pole Attachment Agreement that prohibited the activity described in Paragraphs 8 and 9 above.
12. In my letter to Mr. Holt I referenced Section 1 of the Joint Pole Attachment Agreement which provides:

The Licensor [PVEC] grants permission to the Licensee [Sunset], for the Licensee’s qualified employees, qualified contractors, or qualified assigns to perform work within the Licensor’s power space. It is expressly understood that such qualified person(s) performing such work must be duly trained and currently certified as a “journeyman electrical lineman” as commonly recognized and accepted within the electric industry. A competent, qualified “non-journeyman electrical lineman” under the **direct field supervision** of a journeyman electrical lineman may be used. Absent such

¹ The Joint Pole Attachment Agreement at page 2 defines “power space” as “the area extending 40 inches below the Licensor’s conductors (phase, neutral, secondary-not in conduit), transformers, or other power line equipment and devices...”).

qualifications, all employees, contractors, or assigns of the Licensee are **prohibited** from entering into the Licensor's power space. (Emphasis in original.)

13. In my letter to Mr. Holt I noted that because the Sunset Fiber Network has facilities within PVEC's power space, that any work or maintenance on those facilities would be governed by the requirements of Section 1, specifically that the work or maintenance be conducted qualified persons as that term is defined in the Joint Use Pole Agreement.
14. In my letter to Mr. Holt I referenced Section 3 of the Joint Use Pole Agreement which provides:

Before making attachment to any pole or poles of Licensee [sic, Licensor]...Licensee shall make application and receive a permit therefor with respect to each pole in the form of Exhibit A, hereto attached and made a part hereof. Upon granting such permit, Licensor agrees that Licensee is permitted to make the attachments thereby covered, subject to the terms and conditions of this agreement. In granting or denying the permit, Licensor reserves the sole right to determine whether a grant would affect any of Licensor's electric facilities including, but not limited to, all questions of economy, safety and future needs of Licensor and any contractual obligations of Licensor to any other public utilities, any governmental bodies or other entities which may be entitled to use of or control of use of such pole.

15. In my letter to Mr. Holt I requested that Point obtain proper approval through the application process before attaching any new facilities to any of PVEC's utility poles.
16. After my letter on January 20, Point made at least 168 attachments in January, at least 106 attachments in February and at least 94 attachments in March, all without notice to PVEC and without making the necessary application or receiving a permit from PVEC, thereby depriving PVEC's engineering department from conducting a proper pre-build review.
17. These un-noticed attachments, made without application or permit, placed the integrity of the PVEC electric system at risk.
18. Attached to my affidavit as Attachments A through N are pictures that accurately depict conditions on and around PVEC poles caused by Point. These conditions include: Point cables hanging loosely from PVEC poles, Point cables hanging from PVEC poles and piled on the ground, and other unworkmanlike conditions.
19. On June 30, 2020, Point responded to my safety and reliability concerns regarding its practice of regularly working in PVEC's power space using non-qualified persons through a letter from its lawyer. Point, through its lawyer, failed to agree to use qualified person(s) (e.g. "journeyman electrical lineman") to perform work within PVEC's power space. Instead, Point claimed it had "taken additional steps to train its crews..."²

² Letter from Cameron Bell, counsel for Point, to David Stanifer, counsel for PVEC, dated June 30, 2020.

20. On June 30, 2020, Point also responded to my safety and reliability concerns raised by Point's failure to notifying PVEC in advance of an attachment, failing to make an application to PVEC for an attachment, or receiving PVEC's permission via a permit to make the attachment, through a letter from its lawyer. Point, through its lawyer, continued to refuse to give advance notice, make an application and obtain a permit, all of which are required by the Joint Pole Attachment Agreement. Instead, Point brazenly stated that it would only "report drop attachments at the end of the month."³
21. On July 27, 2020 I sent letters to Sunset Digital Communications, Inc. and to Mr. Paul B. Elswick, Jr., President of Sunset Digital Communications, Inc., exercising PVEC's rights under section 20 of the Joint Use Pole Agreement to terminate the Agreement and the permits issued under the Agreement. Point was sent copies of those letters.
22. Point's ongoing attachment activity on PVEC's poles and in PVEC's power space endangers Point's employees, agents and/contractors, endangers PVEC's employees, and endangers PVEC's customers and the general public.
23. Point's ongoing attachment activity on PVEC's poles and in PVEC's power space represents a clear and present safety issue.
24. Point's ongoing attachment activity on PVEC's poles and in PVEC's power space represents a clear and present danger to the integrity and reliability of the PVEC electric network.

DATE: August 12, 2020

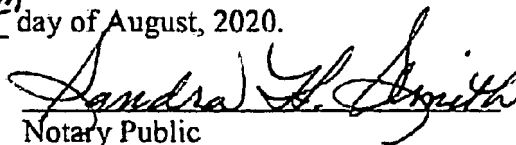


Randell W. Meyers

State of:

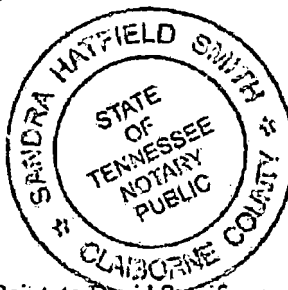
County/City of:

Subscribed and sworn before me this 12th day of August, 2020.



Notary Public

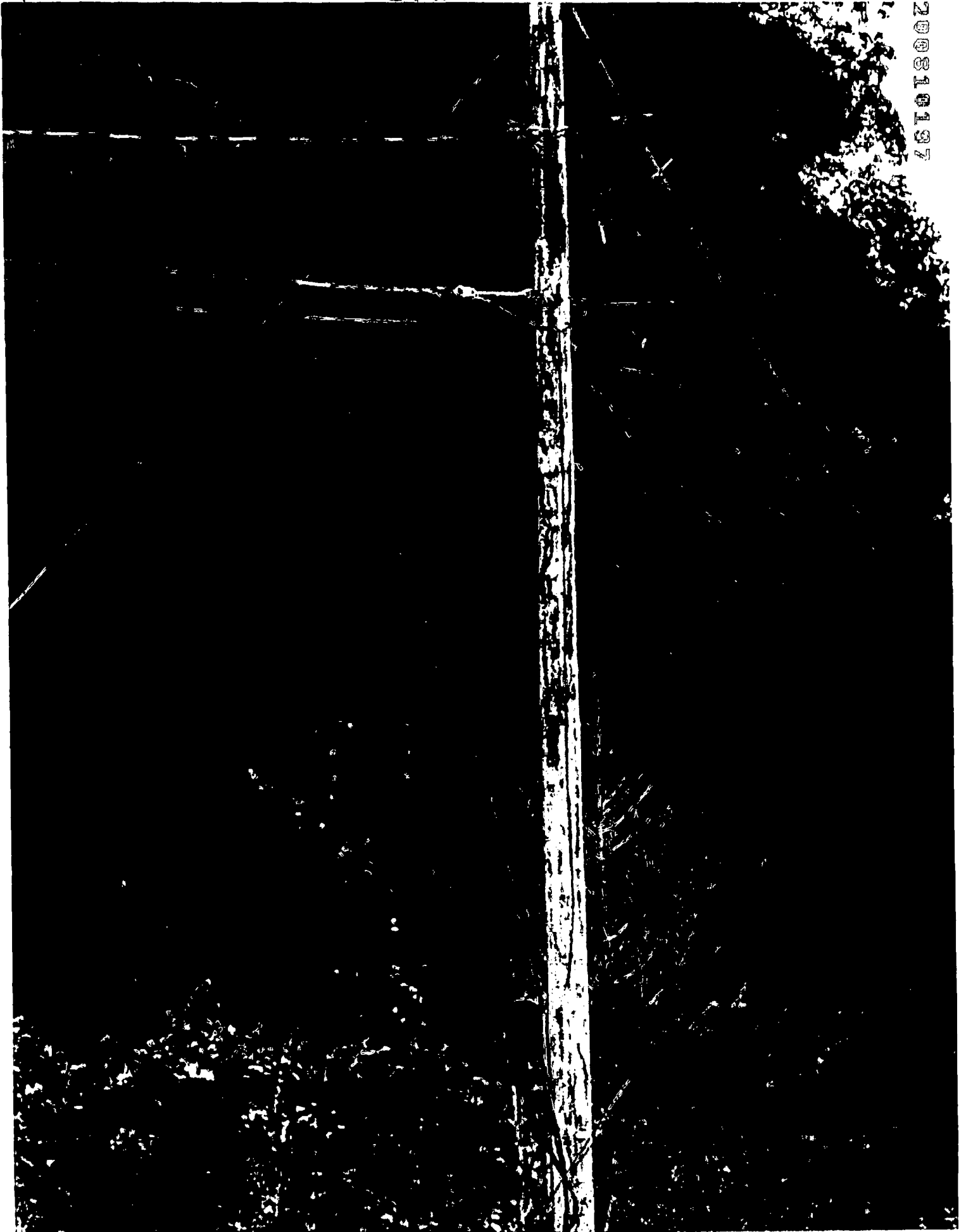
My Commission expires: 5/21/2024



³ Letter from Cameron Bell, counsel for Point, to David Stanifer, counsel for PVEC, dated June 30, 2020.

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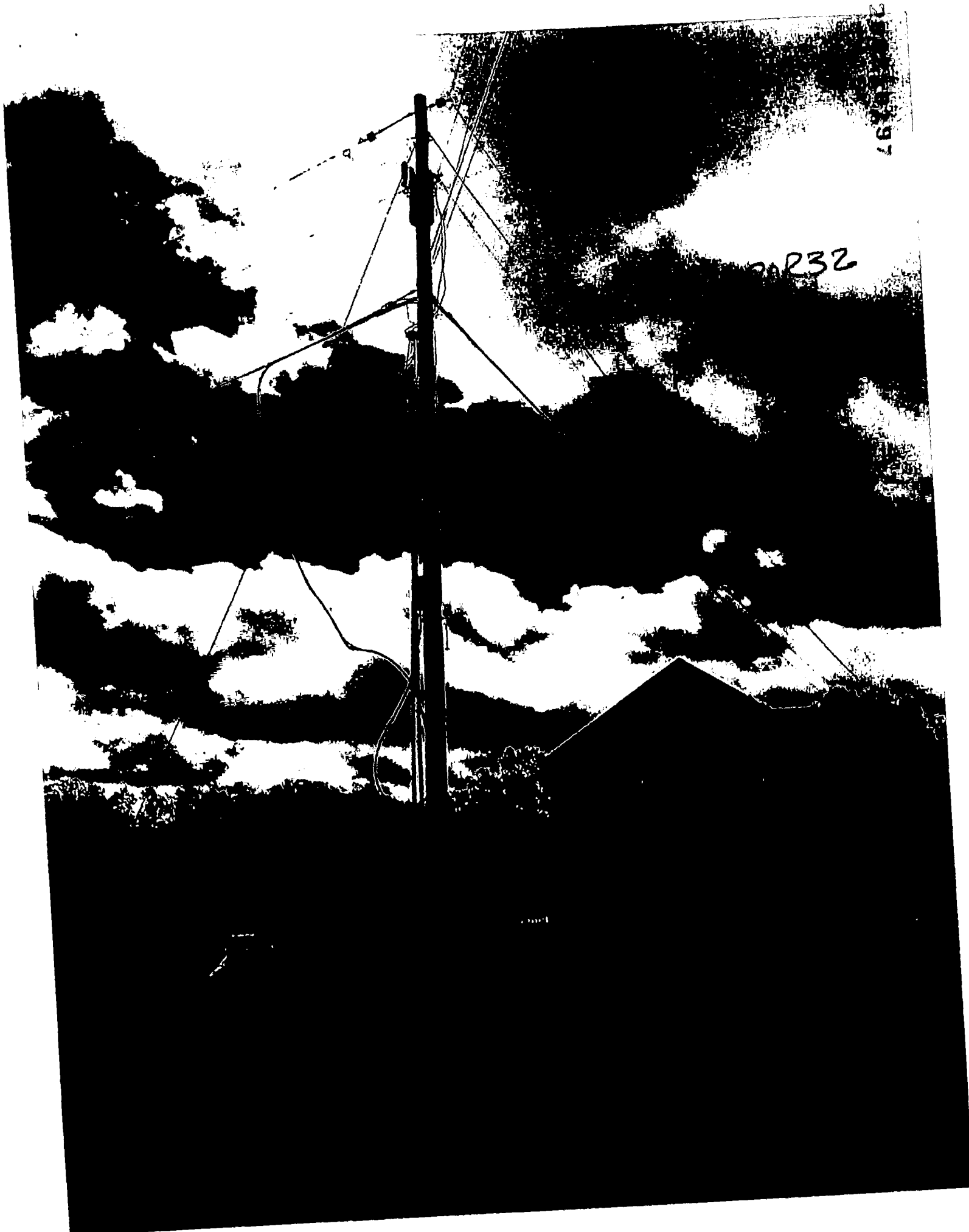
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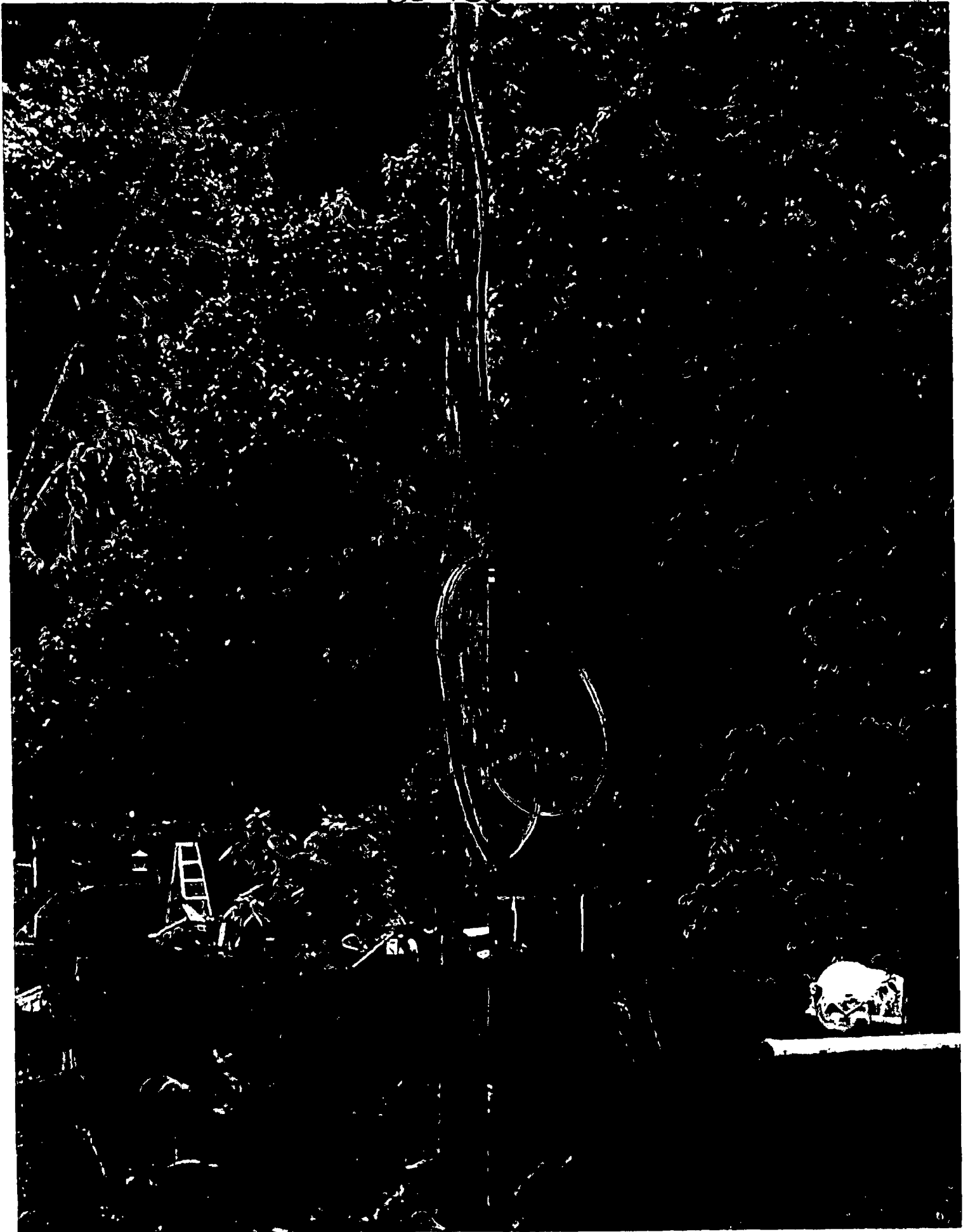
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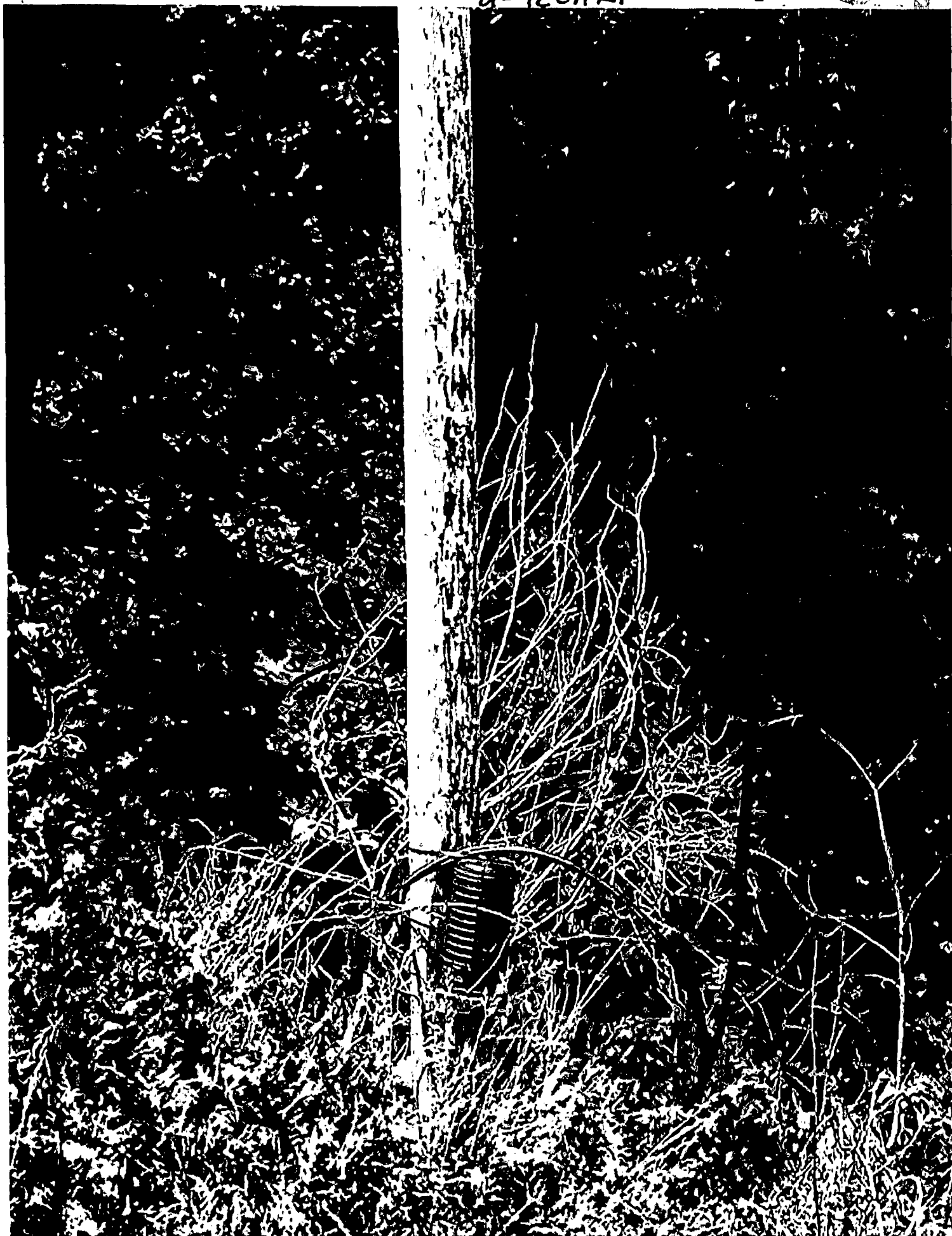
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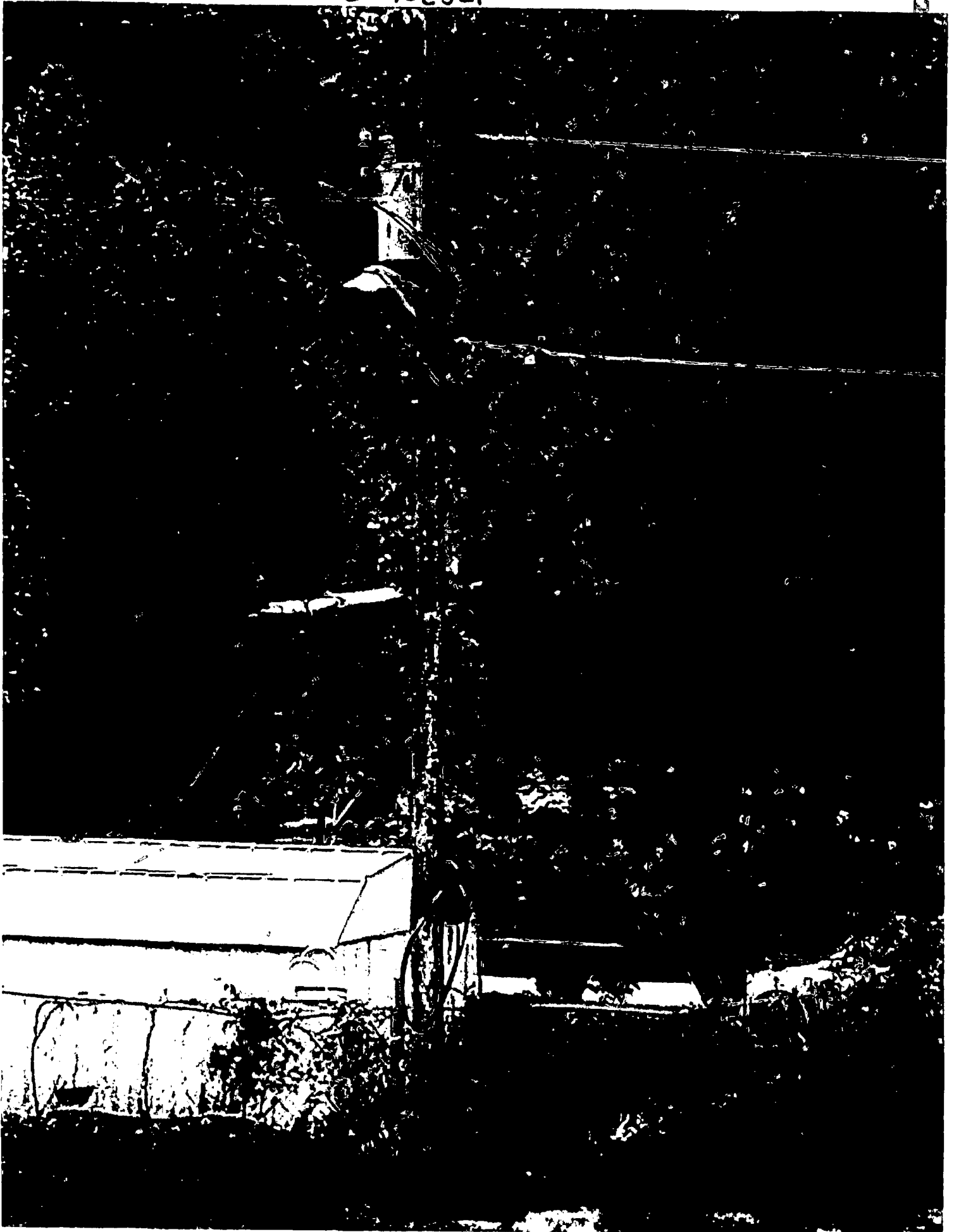
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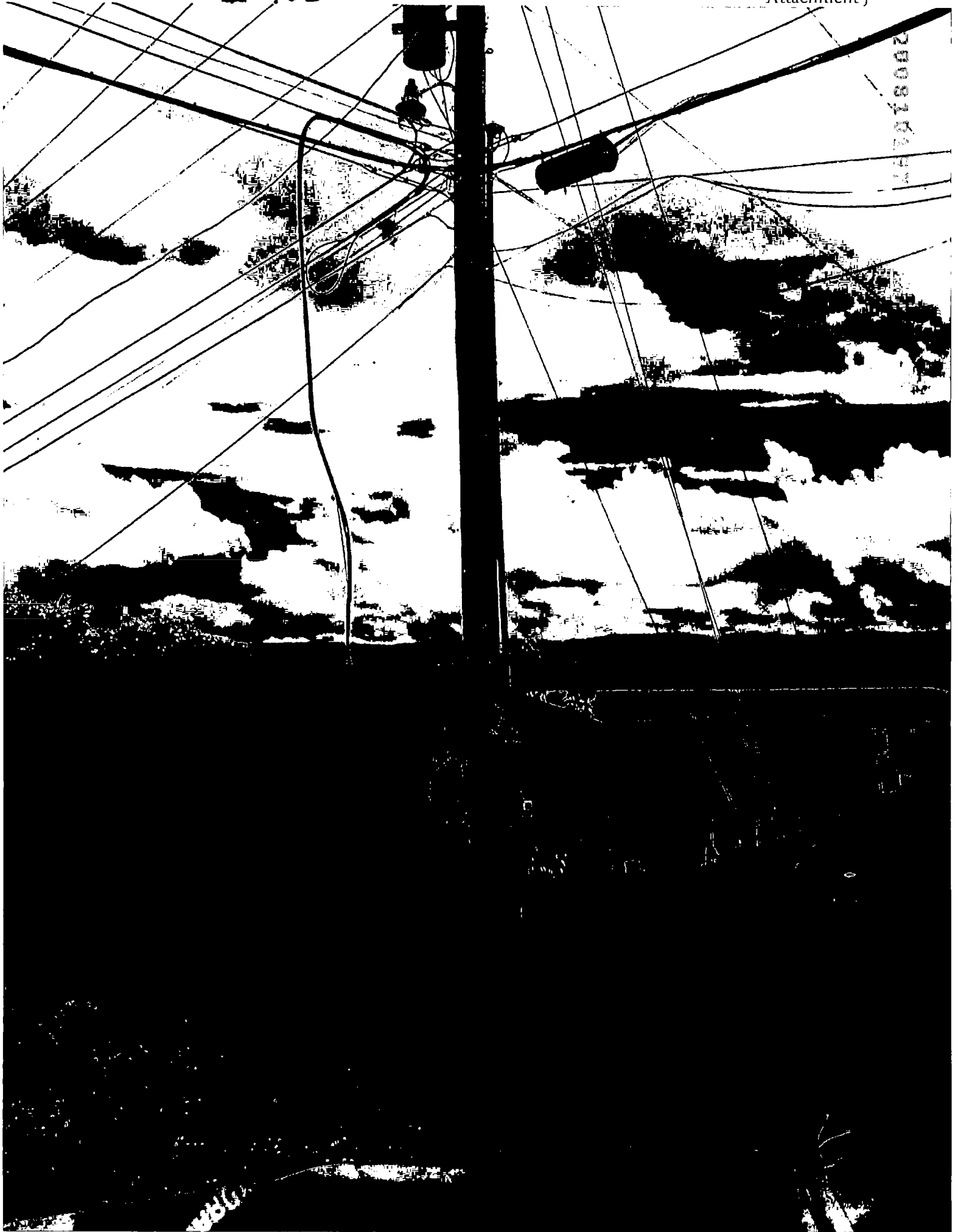
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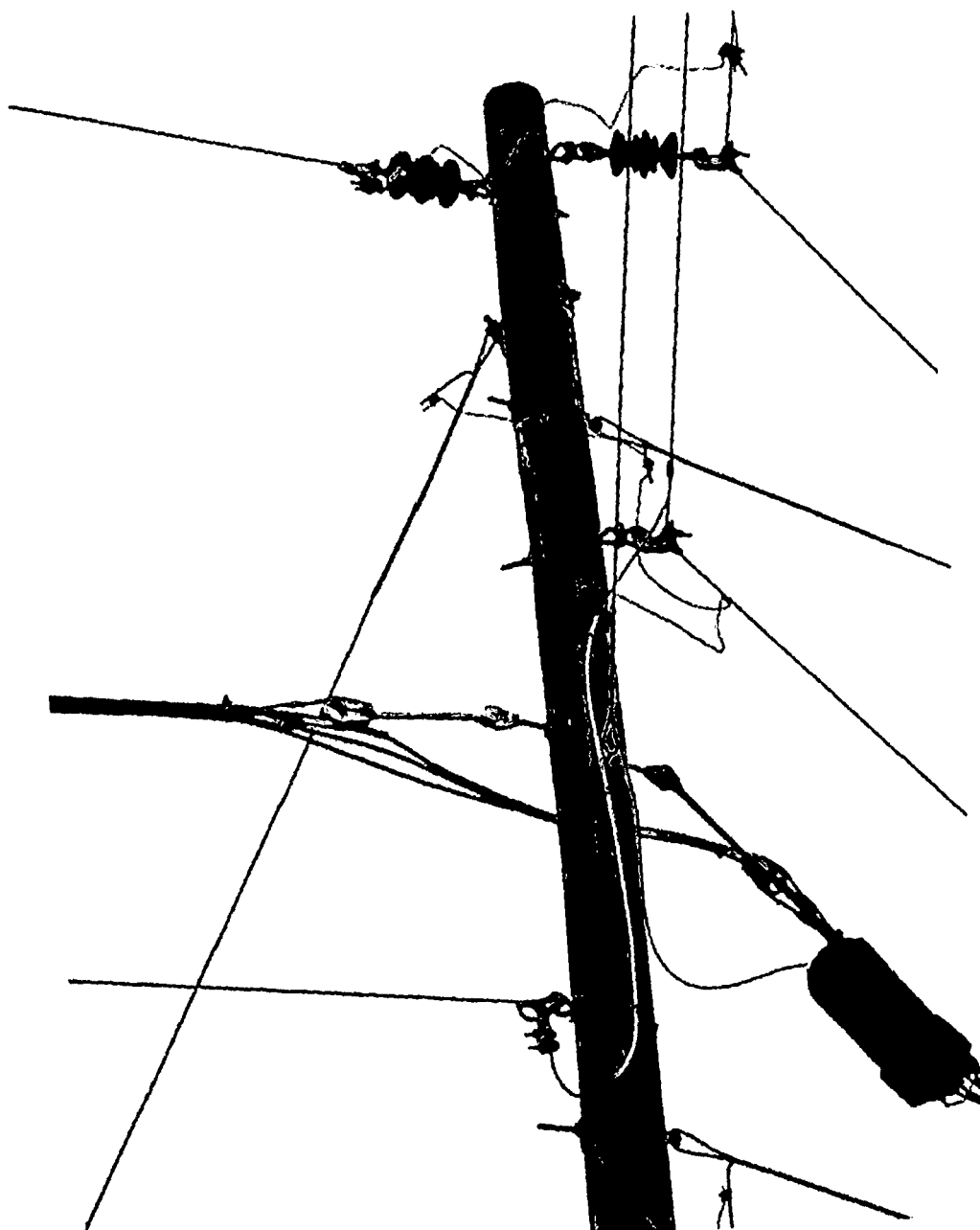
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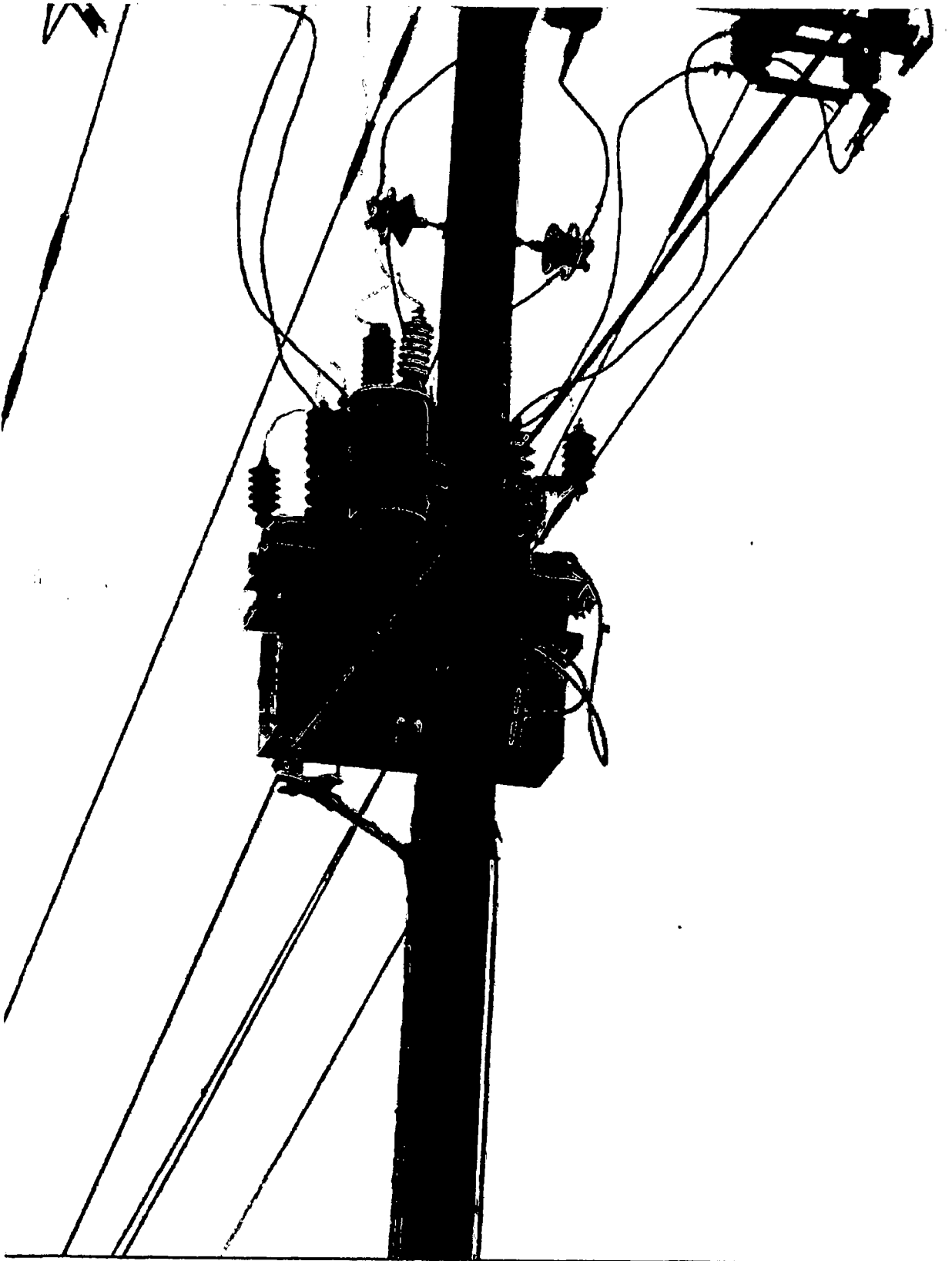


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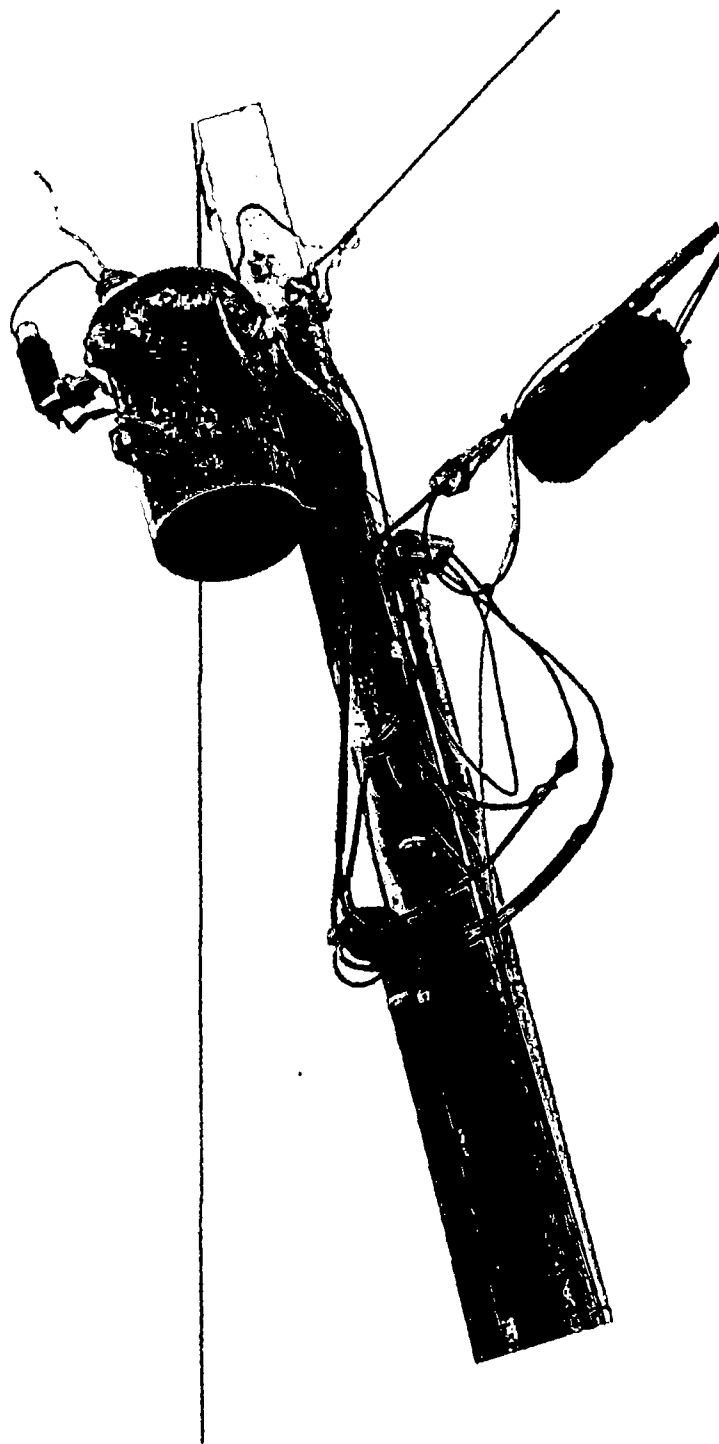


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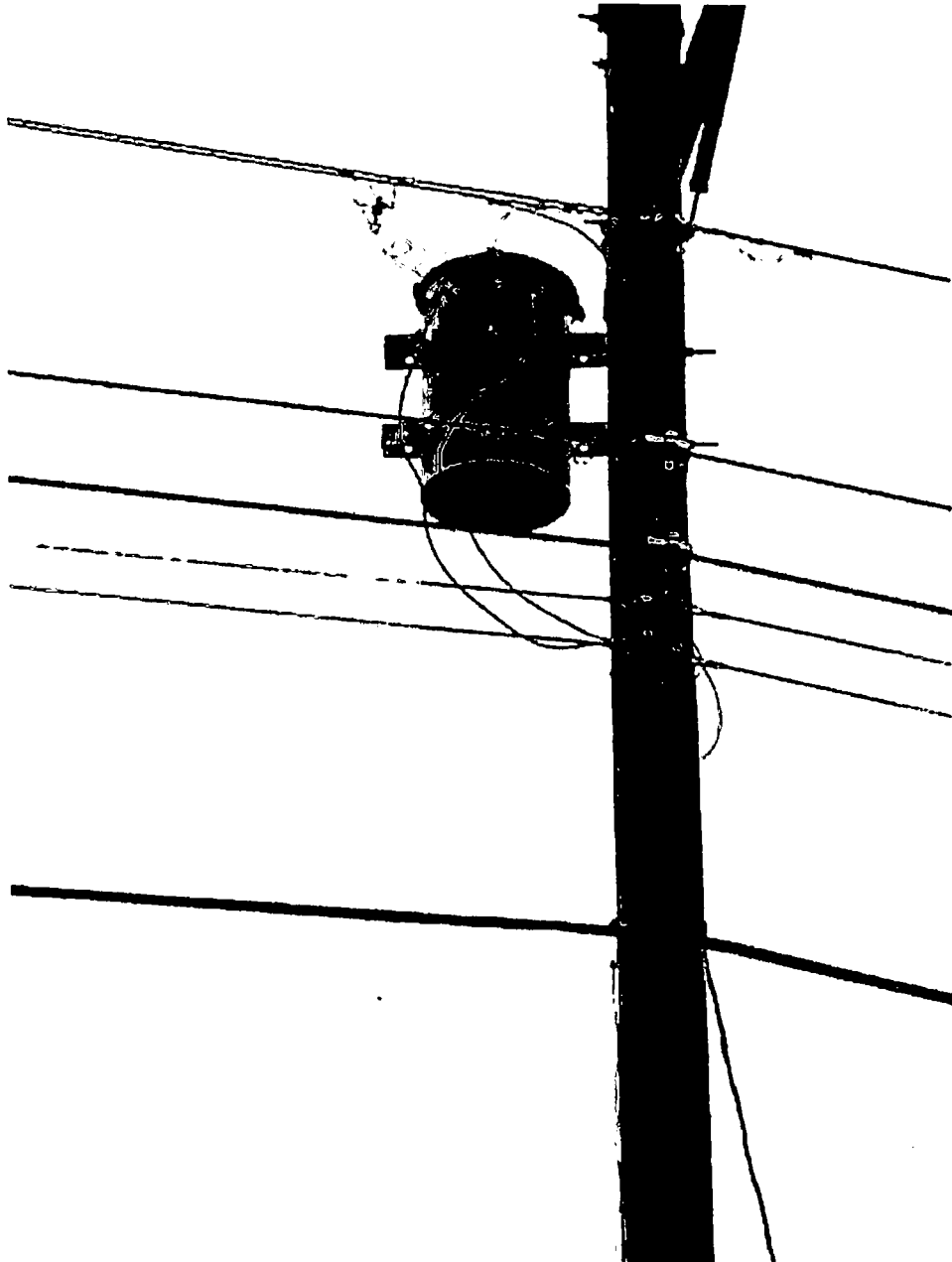
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POWELL VALLEY ELECTRIC COOPERATIVE

P.O. BOX 1528 - 420 STRAIGHT CREEK ROAD - NEW TAZEWELL, TN 37824

PHONE: 423-626-5204 FAX: 423-626-0711

This institution is an equal opportunity provider and employer.

January 20, 2020

Point Broadband
Attn: Todd Holt
1791 O.G. Skinner Drive, Suite A
West Point, GA 31833

Dear Todd,


While preparing Joint Use Pole Attachment invoices, it was noted that Powell Valley Electric Cooperative (PVEC) does not have a direct agreement with Point Broadband (Point) concerning the Sunset Digital attachments acquired. Currently, we are billing Point under the Sunset Digital agreement (Contract #1030). PVEC has begun the process to draft a new Joint Use Pole Attachment Agreement and will forward it for Point's review and signature in the near future. In the meantime, we wanted to highlight a couple of important sections from the Sunset Digital agreement:

Section 3 of the Joint Use Pole Agreement between Powell Valley Electric Cooperative, Inc. (PVEC) and Sunset Digital Communications, Inc. (Contract #1030), stipulates *"Before making attachment to any pole or poles of Licensee or any pole of any utility of which Licensor has electrical attachment, Licensee shall make application and receive a permit therefore with respect to each pole..."* PVEC requests Point Broadband obtain proper approval through the application process before attaching any new facilities to any of PVEC's utility poles.

In addition, Section 1 of the agreement stipulates that *"It is expressly understood that such qualified person(s) performing such work must be duly trained and currently certified as a "Journeyman Electrical Lineman" or equivalent as commonly recognized and accepted within the electric industry and Powell Valley Electric Cooperative. A competent, qualified "non-journeyman electrical lineman" under the direct field supervision of a journeyman electrical lineman may be used. Absent such qualifications, all employees, contractors, or assignees of the Licensee are prohibited from entering into the Licensor's power space."* It should be noted that Sunset Digital has facilities strung inside PVEC's power space and any work/maintenance on those particular facilities would fall within the bounds of this section.

PVEC welcomes the opportunity to work with Point Broadband and stands ready to review your application for attachments. Feel free to contact me if you have any questions.

Sincerely,



Randell W. Meyers
General Manager /CEO
Ph. 423.626.0701