

SCHEDULE 1
 FLORIDA POWER & LIGHT COMPANY
 1967 SURVEY

Depreciation Rates and Comments

COMMISSION APPROVED

ACCOUNT	AVERAGE REMAINING LIFE	NET SALVAGE	BOOK RESERVE	REMAINING LIFE BASE	PERMANENT RATE
	(YRS)	(%)	(%)	(%)	(%)
STEAM PRODUCTION					
311 70 316 Sanford	19.8	(12.0)	45.8	3.4	1.2
311 70 316 Cape Canaveral	14.8	(10.3)	49.3	4.7	1.8
311 70 316 Hialeah	26.4	(4.4)	19.2	1.3	0.3
311 70 316 Riviera 02	1.5	7.8	A	HO	1.2
311 70 316 Riviera 03 & 04	19.2	(14.3)	74.4	4.1	2.2
311 70 316 Ft. Myers	13.3	(13.0)	42.9	3.9	1.9
311 70 316 Manatee	21.4	(7.3)	39.1	3.0	0.6
311 70 316 Ft. Lauderdale	14.4	(14.3)	49.4	3.8	1.2
311 70 316 Port Everglades	14.7	(14.3)	49.4	4.1	2.0
311 70 316 Collier	2.9	7.8	A	HO	1.2
311 70 316 Turkey Point	14.4	(10.3)	54.3	4.3	1.9
311 70 316 St. Johns River Power Plant	31.7	(14.3)	0.0	3.6	1.0
NUCLEAR PRODUCTION					
321 70 325 St. Lucie	27.7	(5.4)	10.1	3.2	0.0
321 70 325 Turkey Point	18.4	(7.5)	25.4	4.5	0.0
OTHER PRODUCTION					
341 70 346 Putnam	21.7	(3.0)	43.4	2.7	0.2
341 70 346 Ft. Myers GI	12.1	0.0	64.3	2.9	0.0
341 70 346 Ft. Lauderdale GI	4.4	0.0	71.9	4.1	0.0
341 70 346 Ft. Everglades GI	4.3	0.0	74.3	3.7	0.0
TRANSMISSION PLANT					
350.2	34.0	0.0	10.2	1.4	N/A
352.0	44.0	(1.0)	20.4	1.9	N/A
351.0	27.0	0.0	23.4	2.4	N/A
354.0	41.0	(11.0)	17.0	2.3	N/A
355.0	27.0	(3.0)	34.0	3.4	N/A
356.0	27.0	(3.0)	34.0	3.7	N/A
357.0	45.0	0.0	20.9	1.4	N/A
358.0	24.0	0.0	40.3	2.3	N/A
359.0	59.0	0.0	13.9	1.5	N/A

SCHEDULE 1

FLORIDA POWER & LIGHT COMPANY
1987 STUDY

Depreciation Rates and Comments

COMMISSION APPROVED

ACCOUNT		AVERAGE REMAINING LIFE (1987)	NET SALVAGE (12)	BOOK RESERVE (13)	REMAINING LIFE RATE (14)	DEPRECIATING RATE (15)
STEAM PRODUCTION						
DISTRIBUTION PLANT						
361.0	Structures & Improvements	37.0	(5.0)	25.7	2.4	N/A
362.0	Station Equipment	36.0	0.0	31.4	5.9	N/A
363.0	Poles, Towers, & Fixtures	23.0	(30.0)	27.4	3.9	N/A
364.0	OH Conductors & Devices	30.3	(40.0)	37.4	5.6	N/A
364.6	UC. Condukt., Duct System	40.0	0.0	29.5	2.0	N/A
364.7	UC. Condukt., Direct Burial	24.0	0.0	13.5	3.6	N/A
367.6	UC. Condukt., Duct Syst.	34.0	12.0	21.0	1.7	N/A
367.7	UC. Condukt., Direct Burial	13.6	0.0	25.9	5.4	N/A
368.0	Line Transformers	18.9	(30.0)	27.2	4.4	N/A
368.1	Uninsulated PCB Trans.	18.9	(30.0)	27.2	4.4	N/A
TOTAL Account 360						
369.1	Services, Overhead	17.2	(60.0)	30.0	7.6	N/A
369.2	Services, Underground	29.0	(20.0)	23.7	3.3	N/A
370.0	Wires	16.3	0.0	31.0	4.2	N/A
371.0	Install. on Custom. Prop.	10.1	(20.0)	15.3	10.3	N/A
371.0	Street & Signal Lights	14.4	(20.0)	26.9	6.3	N/A
GENERAL PLANT						
370.0	Structures & Improvements	39.0	0.0	16.4	2.1	N/A
371.1	Office Furniture	7	YEAR	A	0	0
371.2	Office Accessories	5	YEAR	A	0	0
371.3	Office Equipment	7	YEAR	A	0	0
371.4	Sup. & Mailbox Equipment	7	YEAR	A	0	0
371.5	ERP Equipment	5	YEAR	A	0	0
372.0	Trans. Aircraft	6.7	20.0	32.9	7.0	N/A
372.1	Trans. Automobile	3.2	15.0	44.0	12.0	N/A
372.2	Trans. Light Trucks	3.7	15.0	44.0	11.1	N/A
372.3	Trans. Heavy Trucks	0.1	10.0	44.0	5.7	N/A
372.7	Trans. Marine Equip.	3	YEAR	A	0	0
372.8	Trans. Other	3	YEAR	A	0	0
372.9	Trans. Trailers	13.4	0.0	44.0	1.4	N/A
373.1	Handling Equipment	24.0	0.0	21.5	3.3	N/A
373.2	Storage Equipment	7	YEAR	A	0	0
373.3	Prior Handling Equip.	7	YEAR	A	0	0
374.1	Fixed/Stationary Equip.	10.9	3.0	24.4	1.7	N/A
374.2	Portable Equip.	7	YEAR	A	0	0
375.1	Fixed/Stationary Equip.	25.0	0.0	15.4	1.4	N/A
375.2	Portable Equip.	7	YEAR	A	0	0
376.1	Power Op. Equip. (Trans.)	3.4	20.0	0.0	14.3	N/A
376.0	Other Power Op. Equip.	3.4	20.0	22.4	10.3	N/A
377.1	Other Comm. Equip.	7.2	0.0	20.0	11.0	N/A
377.3	Official Comm. Equip.	0.0	0.0	20.0	0.0	N/A
377.0	Fluor. Equip.	10.0	0.0	2.0	30.0	N/A
378.0	Miscellaneous Equipment	7	YEAR	A	0	0

**Denotes whole life rates

**COMMISSION APPROVED
CORRECTIVE RESERVE TRANSFERS**

	<u>1-1-87</u> <u>Bank Reserve</u>	<u>Calculated</u> <u>Theoretical</u> <u>Reserve</u>	<u>Reserve</u> <u>Transfer</u>	<u>Restated</u> <u>Reserve</u>
Riviera #3 & #4	34,470,482	40,803,834	6,333,442	40,803,834
Ft. Myers	31,470,622	37,046,069	5,575,447	37,046,069
Ft. Lauderdale	23,891,468	29,834,510	5,943,042	29,834,510
Port Everglades	74,787,628	89,049,626	14,262,000	89,049,626
Turkey Point	34,796,182	42,839,263	8,043,081	40,113,929
Line Transformers	351,091	8,051,091	7,700,000	8,051,091
Power Operated Equip. (Trans.)	(8,286)	1,123,786	8,286	0
JDIC Adj. for 1986 & 1987	44,113,366		(44,113,366)	0

SCHEDULE 3

FINANCIAL STATEMENTS
 (1979/80 Information Act)
 Consolidated Statement

Account	1979	1980	1981	1982	1983	1984	1985	1986	1987
ASSETS									
Current Assets	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000
Fixed Assets	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000
LIABILITIES									
Current Liabilities	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000
Fixed Liabilities	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000	1,457,000
Net Assets	0	0	0	0	0	0	0	0	0

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SCHEDULE 4

ST. JOHN'S RIVER POWER PARK UNIT NO. 1

	ESTIMATED LIFE	PROPOSED NET SALVAGE	DISCOUNTED FUTURE NET SALVAGE	REMAINING LIFE DEPRECIATION RATE	REMAINING LIFE DEP. RATE w/DFNS
311 STRUCTURES & IMPROVEMENTS					
311-1 Site Preparation & Improvements	37-1	-25-05	-1-75	3-45	9-15
311-2 Water Supply & Waste Water Systems	33-0	-25-05	-1-05	3-05	9-35
311-3 Buildings - Service & Support	34-0	-25-05	-1-75	3-45	9-35
311-4 Buildings - Boiler & Control	34-0	-25-05	-1-75	3-45	9-35
311-5 Circulating Water Systems / Structures	36-7	-25-05	-1-75	3-45	9-15
Total Account 311	33-7	-25-05	1-75	3-35	9-25
312 BOILER PLANT EQUIPMENT					
312-1 Coal Unloading, Storage & Transfer	26-2	-14-05	-1-15	4-45	9-45
312-2 Piping	37-0	-14-05	-0-95	3-05	4-05
312-3 Air Supply and Draft Systems	30-0	-14-05	-1-05	3-75	4-75
312-4 Air Quality Control Systems (AQCS)	26-4	-14-05	-1-15	4-35	9-45
312-5 Flue Gas Desulfurization Systems (FGDS)	30-4	-14-05	-1-05	3-05	4-05
A) FGDS Structures	40-0	-14-05	-0-95	2-95	3-05
B) FGDS Equipment	34-2	-14-05	-1-15	4-75	9-05
312-6 Solid Waste Handling	34-3	-14-05	-1-05	3-35	4-35
312-7 Boiler Equipment & Accessories	37-5	-14-05	-0-95	3-05	4-05
312-8 Feedwater & Condensate Systems	31-5	-14-05	-1-05	3-45	4-45
Total Account 312	31-5	-14-05	1-05	3-75	4-75
314 TURBOGENERATOR EQUIPMENT					
314-1 Turbine Generator	26-3	-9-05	-0-75	4-15	4-05
314-2 Condenser and Auxiliaries	34-0	-9-05	-0-65	3-25	3-05
314-3 Circulating Water Systems	33-0	-9-05	-0-65	3-05	3-75
314-4 Cooling Towers & Support Systems	30-9	-9-05	-0-65	2-05	3-45
Total Account 314	30-9	-9-05	0-75	3-45	4-35
315 ACCESSORY ELECTRIC EQUIPMENT					
315-1 Aux Power TX's & Emergency Power Sys	34-3	-12-05	-0-85	3-35	4-15
315-2 Cables, Conductors & Insulators	34-9	-12-05	-0-85	3-05	3-05
315-3 Flue Gas Desulfurization Systems (FGDS)	23-9	-12-05	-0-95	4-35	9-25
315-4 Precipitator	29-4	-12-05	-0-95	3-05	4-75
315-5 Control Boards, Switchgear and MCC Sys	27-7	-12-05	-0-95	4-05	4-95
Total Account 315	29-9	-12-05	0-95	3-05	4-75

SCHEDULE 4

	ESTIMATED LIFE	PROPOSED NET SALVAGE	DISCOUNTED FUTURE NET SALVAGE	REMAINING LIFE DEPRECIATION RATE	REMAINING LIFE DEP. RATE w/0%NS
316 MISCELLANEOUS POWER PLANT EQUIPMENT					
316-1 Communications	15-0	2-55	0-35	6-55	6-25
316-2 Compressed Air	25-0	2-55	0-25	3-05	3-45
316-3 General Plant Equipment	34-9	2-55	0-25	2-05	2-45
316-4 Power Generation Equipment					
A) Equipment - General	9-7	2-55	0-35	10-05	9-75
B) Equipment - Heavy	11-7	2-55	0-35	8-35	8-05
C) Equipment - Light	15-0	2-55	0-35	6-55	6-25
D) Management Information System	5-4	2-55	0-45	16-05	17-45
E) Fleet Service Vehicles	8-0	2-55	0-45	12-25	11-05
F) Warehouse Tools	11-3	2-55	0-35	8-05	8-35
G) Bench Stock	10-0	2-55	0-35	9-05	9-45
H) Radio Equipment & Misc.	11-1	2-55	0-35	8-75	8-45
Total Account 316	20-2	2-55	0-35	6-15	5-95
09/30/86 - TOTAL SJPPP UNIT #1	31-9	-14-95	1-15	3-75	4-75

RESPONSE OF FLORIDA POWER & LIGHT COMPANY

EXHIBIT F

BOOTH AMERICAN COMPANY

v.

DUKE POWER COMPANY

MEMORANDUM OPINION AND ORDER

mailed 3-22-84

Before the
Federal Communications Commission
Washington, D. C. 20554

3064

In the Matter of)	
)	
BOOTH AMERICAN COMPANY)	
d/b/a/ ANDERSON CABLEVISION)	
)	
Complainant)	
)	
v.)	File No. PA-82-0068
)	
DUKE POWER COMPANY)	
)	
Respondent)	

MEMORANDUM OPINION AND ORDER

Adopted March 16, 1984 ; Released March 22, 1984

By the Chief, Common Carrier Bureau:

1. Before the Bureau, pursuant to delegated authority, is a complaint filed under Section 224 of the Communications Act, 47 U.S.C. § 224 (Supp. II, 1978), by Booth American Company, d/b/a Anderson Cablevision (Booth) alleging that Duke Power Company (Duke) has imposed unjust and unreasonable rates for cable television pole attachments.¹ Section 224 empowers the Commission to adjudicate attachment rate disputes between cable television system operators and telephone and electric utilities. After consideration of the pleadings, we conclude that Duke charges unjust and unreasonably high rates and, moreover, that a refund is warranted.

2. Booth owns and operates cable television systems serving Anderson, South Carolina. Pursuant to a contract with Duke, Booth has attached distribution facilities to approximately 5,100 poles.

3. Using information obtained from Duke's 1981 FERC Form 1 and applying the formula established by Section 1.1409(c) of the Commission's Rules, 47 C.F.R. §1.1409(c), Booth calculates that the maximum just and reasonable rate is \$2.21 per attachment. Therefore, it urges us to substitute this lower rate for the \$3.00 rate contained in the contract and,

¹ Duke has filed a cross-complaint alleging that the current rate is too low and requesting that Booth be ordered to pay a higher rate.

further, to order appropriate refunds. Duke, by contrast, argues that a rate of \$3.05 is fully justified under the pole attachment rate formula, and in its cross-complaint requests that we order Booth to pay an annual rate of \$3.05 per attachment in lieu of the \$3.00 rate it is currently charging.

4. Section 1.1409(c) of the Commission's Rules, 47 C.F.R. §1.1409, provides that the maximum "just and reasonable" rate for pole attachments is to equal the percentage of the total usable space occupied by the pole attachment times the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole. This rule, expressed as a formula, is as follows:

$$\begin{array}{rcll} \text{Maximum} & & \text{Operating} & \text{Capital Costs} \\ \text{Rate} & = & \text{Expenses} & + \text{ of Poles} \\ & & \text{by CATV} & \\ & & \text{Total Usable Space} & \end{array} \quad \times$$

In the instant case, the parties' dispute centers on the operating expenses and capital costs of poles.

5. Total Usable Space and Space Occupied by CATV. The parties agree on the figures for total usable space (13.5 feet) and space occupied by CATV (one foot), both of which comport with the Commission's Rules and prior decisions. Thus, we will use these figures in the rate formula.

6. Operating Expenses and Capital Costs of Poles. The final formula element to be determined is operating expenses and capital costs of poles. Although operating expenses and capital costs of poles (also known as "carrying charges") can be expressed directly as dollar amounts, these costs may also be expressed as a percentage of pole investment. Section 1.1409(g)(9). Thus, the operating expenses and capital costs of poles normally are determined from the cost of a bare pole and the carrying charges attributable to the cost of owning a pole.

7. Gross Cost of a Bare Pole. Using figures gathered from Duke's 1981 FERC Form 1, Booth calculates the gross cost of a bare pole by subtracting 15 percent of the gross pole plant (Account 364-Poles, towers and fixtures) to eliminate the investment in crossarms and other items not essential for CATV attachments. Booth then divides this figure by the total number of poles to calculate a gross investment per bare pole. Duke disputes the 15-percent figure and substitutes a figure from its company records for the gross investment in crossarms and other items not usable for CATV attachments.

8. We must reject Duke's crossarm adjustment figure. The Commission has previously determined that the gross cost of a pole should be adjusted for non-cable associated hardware. Each party is free to propose and document its own figure. Duke, however, opposes the 15-percent

estimate without offering a suitable alternative. Although it states that its figure includes braces, racks, extension brackets, pins, platforms and bayonets, it has provided no specific details to support the figure. For us to accept a figure other than 15-percent, the utility must identify each element of the account and the corresponding investment so that we can verify that the totals correspond with the total amount in the account and that the utility has included all non-cable related items in its adjustment figure. See Teleprompter Corp. v. Mountain States Telephone and Telegraph Company, Mimeo No. 001869, released, July 9, 1981; Teleprompter of Fairmont, Inc. v. C&P Telephone Company of West Virginia, 79 FCC 2d 232, aff'd 85 FCC 2d 243, 246-247 (1981). Under these circumstances, where one party has failed to document its figure, and the other has proposed a figure used earlier in Commission decisions, using the estimate is both reasonable and proper. Therefore, we will adopt Booth's calculation of \$148.59 for the gross investment per bare pole.²

9. Carrying Charges. We next turn to carrying charges, the remaining figure necessary for calculating operating expenses and capital costs of poles. The parties dispute the maintenance, administrative, and tax components of the carrying charges.³

$$2 \quad \begin{array}{l} \text{Gross Cost of a} \\ \text{Bare Pole} \end{array} = \frac{\text{Gross Pole Investment} - 15\% (\text{Gross Pole Investment})}{\text{Number of Poles}}$$

$$\begin{array}{l} \text{Gross Cost of a} \\ \text{Bare Pole} \end{array} \quad \frac{\$234,278,573 - \$199,136,788}{1,340,206}$$

$$\begin{array}{l} \text{Gross Cost of a} \\ \text{Bare Pole} \end{array} = \$148.59$$

3 The following table summarizes the figures supplied by the parties.

	<u>Booth</u>	<u>Duke</u>
Depreciation	3.40%	3.40%
Administration	0.52%	1.44%
Maintenance	3.43%	4.56%
Taxes	2.57%	7.15%*
Cost of Capital	<u>10.18%</u>	<u>10.18%</u>
	20.10%	26.73%

* We have combined Duke's 1.14% figure for ad valorem taxes with its 6.01% figure for income taxes to calculate a total tax figure of 7.15%.

10. Maintenance Expense. Booth, using the methodology previously accepted by the Commission to calculate the maintenance expense component of the carrying charges, calculates the maintenance expense by dividing Accounts 364 (Poles, towers, and fixtures), 365 (Overhead conductors and devices), and 369 (Services) by Account 593 (Maintenance of overhead lines). Teleprompter of Fairmont v. C&P Telephone Co. of West Virginia, supra, 79 FCC 2d at 242, Warner-Amex Cable Communications v. Florida Power and Light Co., Mimeo No. 4414, released June 8, 1982; King Video Cable Co. v. Idaho Power Co., Mimeo No. 2719, released March 12, 1982. Duke, on the other hand, argues that Subaccount 593.4 (the Services subaccount of Maintenance of overhead lines) should be deducted from Account 593 because it believes that the services portion of Account 593 is not attributable to CATV. As Duke would exclude Services from the numerator, it argues that Account 369 (Services) also should be excluded from the denominator. Moreover, Duke includes Account 590 (Maintenance supervision and engineering) on the basis that all labor and expenses associated with the supervision and engineering of the maintenance system are included in that account. According to Duke, this includes expenses attributable to the supervision of the maintenance of poles and therefore should be charged to CATV.

11. Duke has not provided a convincing reason for deviating from the established formula. Absent such an argument, we decline to apportion Account 593 (and therefore delete Account 369) or add Account 590. Thej Bureau has previously rejected similar attempts at apportioning this account. Warner-Amex Cable Communications Inc. v. Arkansas Power and Light Co., Mimeo No. 100, released October 11, 1983. Moreover, since subaccounts are not reported separately in FERC Form 1, to provide the kind of detail necessary to support allocation of the accounts used to compute the components of the carrying charges would unduly complicate and unnecessarily delay the process of determining the maximum lawful rate.⁴ This would

4 The Commission's methodology is predicated on a simple procedure by which all of the parties can predict the FCC-determined maximum just and reasonable rate, without a formal complaint in most instances, by applying the data from publicly available records (the FCC Form M or the FERC Form 1) to the Commission's formula. It relies on balancing. Thus, while small portions of some accounts which admittedly relate to cable attachments (such as loading factors) are omitted, other entire accounts which contain non-cable-related expenses are included. Liberty TV Cable Co. v. Southwestern Bell Telephone Co., Mimeo No. 6625, released September 22, 1983.

contravene the statutory mandate in favor of a simple and expeditious process rather than a full-blown rate case. See Senate Rep. No. 95-580, 98th Cong., 1st Sess. (1977). Of course, since we are including all of Account 593, including the services portion, in the numerator, we must also include the corresponding services investment, Account 369, in the denominator. Finally, the Bureau has specifically excluded Account 590 as not having a direct relationship to CATV. Teleprompter Corp. and Teleprompter Southeast, Inc. v. Alabama Power Company, Mimeo No. 001808, released June 19, 1981; Warner-Amex Cable Communications, Inc. v. Southeastern Electric Power Company, Mimeo No. 2718, released March 12, 1981. Therefore, we will accept Booth's 3.43 percent figure for the maintenance expense.⁵

12. Administrative Expense. Booth calculates the administrative expense by dividing the sum of Accounts 920 (Administrative and general salaries), 921 (Office supplies and expenses), 923 (Administrative expense transferred-credit) and 928 (Regulatory commission expenses) by the gross plant investment. Duke agrees that this formula is consistent with past Commission actions. However, Duke maintains that we have also sanctioned the inclusion of Account 923 (Outside services employed) in the numerator. Teleprompter Corp. v. Tampa Electric Company, Mimeo No. 1127, released December 16, 1981 (Tampa Electric). Booth points out that in a more recent case the Bureau disallowed Account 923, distinguishing Tampa Electric on the basis that both parties agreed to use Account 923 in that case and that Account 923 was not at issue in that case. Continental Cablevision of New Hampshire v. Public Service Company of New Hampshire, Mimeo No. 3249, released April 9, 1982; See also Multi-Channel TV Cable Co. of Mansfield Inc. v. Virginia Electric and Power Company, Mimeo No. 1740, released January 12, 1983. In these circumstances we shall continue to exclude Account 923, and shall adopt the methodology advanced by Booth as

5	Maintenance Expense	=	<u>Account 593</u> Accounts 364 + 365 + 369
	Maintenance Expense	=	<u>\$18,931,536</u> \$234,278,573 + \$197,860,279 + \$119,476,657
	Maintenance Expense	=	3.43%

it comports with prior Commission decisions. The administrative expense is therefore 0.52 percent.⁶

13. Taxes. The final element of the carrying charges in dispute is taxes. Booth computes the tax component by dividing total taxes paid in 1981 by gross plant investment. Duke argues that Booth uses a "flow-through" method, i.e. taxes paid, but that the correct method is a "normalized tax approach." It points out that the Internal Revenue Service, the Federal Energy Regulatory Commission, as well as the South Carolina Public Service Commission, which regulates Duke, require utilities to use a "normalized tax approach." In addition, Duke asserts that the use of a "normalized tax approach" is also mandated by the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34 (ERTA).

14. We reject Duke's argument supporting the use of normalized taxes for several reasons. First, Duke's reliance on ERTA is misplaced since that Act, and the regulations promulgated thereunder, apply only to full ratemaking proceedings. Pole attachment complaints, however, are resolved through a simple complaint procedure. In fact, Congress specified that this Commission is to avoid ratemaking proceedings in resolving pole attachment disputes. See Senate Report No. 95-580, supra. Second, the use of normalized taxes results in calculating the tax component with deferred taxes rather than with taxes actually paid. It is well established that only taxes actually paid are to be used to calculate the tax component. Liberty T.V. Cable, Inc. v. Southwestern Bell Telephone Co., Mimeo No. 6625, released September 22, 1983; Teleprompter Corp. v. Florida Power and Light Co., FCC 83-562, released December 5, 1983. This is consistent with the intent of the governing statute to charge cable operators only with actual costs and expenses. See 47 U.S.C. §224(d)(1). Accordingly, we will

$$6 \quad \text{Administrative Expense} = \frac{\text{Accounts 920} + 921 + (-922) + 928}{\text{Gross Plant Investment}}$$

$$\text{Administrative Expense} = \frac{\$22,589,202 + \$15,840,990 + (-\$1,943,972) + \$885,984}{\$7,183,211,765}$$

$$\text{Administrative Expense} = 0.52\%$$

use Booth's calculation of 2.57% for the tax component of the carrying charges.⁷

15. In summary, adopting the component figures outlined above, we calculate the total carrying charges to be 20.10 percent.

Depreciation	3.40%
Administration	0.52%
Maintenance	3.43%
Taxes	2.57%
Cost of Capital	<u>10.18%</u>
Total Annual Carrying Charges	20.10%

16. Maximum Rate. By inserting the values developed in paragraphs 5-15 into the formula, as follows, we calculate that the maximum rate per attachment is \$2.21.

$$\begin{aligned} \text{Maximum Rate} &= \frac{\text{Space Occupied by CATV}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charges} \\ \text{Maximum Rate} &= \frac{1 \text{ Foot}}{13.5 \text{ Feet}} \times \$148.59 \times 20.10\% \\ \text{Maximum Rate} &= \$2.21 \end{aligned}$$

$$\begin{aligned} 7 \quad \text{Taxes} &= \frac{\text{Total Taxes Paid}}{\text{Gross Plant Investment}} \\ \text{Taxes} &= \frac{\$184,511,051}{\$7,183,211,765} \\ \text{Taxes} &= 2.57\% \end{aligned}$$

17. Under Section 224 of the Act and our underlying rules, \$2.21 per pole attachment per year is thus the maximum just and reasonable rate Duke may charge. As noted, however, Duke has been charging \$3.00 per attachment annually during the period covered by this complaint. The conclusion is inescapable, therefore, that Duke's rates are unjust and unreasonable within the meaning of the Act.

Remedies

19. Where, as here, substantial overcharges are established by the record, a refund of excess payments retroactive to the date of the filing of the complaint, plus interest, is proper.⁸ For the same reasons described in Cable Information Services, Inc. v. Appalachian Power Co., 81 FCC 2d 383 (1980) (C.I.S.), we are ordering a refund reflecting the difference between the \$2.21 rate and the \$3.00 rate currently being charged Booth for all payments in excess of the \$2.21 rate made for service received after July 6, 1982. See discussion in C.I.S., 81 FCC 2d 392-93.

Ordering Clauses

19. Accordingly, IT IS ORDERED, pursuant to Sections 0.291 and 1.1401-1413 of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1401-1413, That the complaint of Booth American Company, d/b/a Anderson Cablevision, IS GRANTED to the extent indicated above.

8 The following are the appropriate rates of interest for pole attachment refunds:

July 6, 1982 through December 31, 1982	20 percent simple interest	Rev. Rul. 81-260 1981-44 I.R.B. 19
January 1, 1983 through June 30, 1983	16 percent simple interest	Rev. Rul. 82-182 1982-44 I.R.B. 9
July 1, 1983 until the date of payment of funds	11 percent simple interest	Rev. Rul. 83-76, 1983-18 I.R.B. 37

See Teleprompter of Fairmont, Inc. v. Chesapeake and Potomac Telephone Company of West Virginia, 79 FCC 2d 232, 238-39, (1980), for discussion of the appropriate rate of interest on overcharges.

20. IT IS FURTHER ORDERED, pursuant to Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, That the cross-complaint filed by Duke Power Company IS DENIED.

21. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(a) of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1410(a), That the existing annual rate of \$3.00 for each pole attachment arising out of the agreement between Duke Power Company and Booth American Company d/b/a Anderson Cablevision IS TERMINATED, effective upon the release of this Order.

22. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(b) of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1410(b), That an annual rate of \$2.21 for each pole attachment IS SUBSTITUTED for the existing rate in the contract described in paragraph 21, effective upon release of this Order.

23. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1410(c) of the Commission's Rules, 47 C.F.R. §§0.291 and 1.1410(c), That Duke Power Company SHALL REFUND, within thirty (30) days of release of this Order, to Booth American Company, d/b/a Anderson Cablevision, excess payments made for service received after July 6, 1982. These excess payments for which a refund is ordered consist of the difference between the payments made and payments based on the maximum annual rate of \$2.21 per attachment. This refund shall consist of the excess portions included in the payment due July 1, 1982, (prorated from July 6, 1982) and all subsequent payments made after that date.

24. IT IS FURTHER ORDERED, That the refund shall bear interest at an annual rate of 20 percent simple interest from the filing date of the complaint through December 31, 1982; at an annual rate of 16 percent simple interest from January 1, 1983; through June 30, 1983; and at an annual rate of 11 percent simple interest from July 1, 1983, until the date of full payment to the complainant.

FEDERAL COMMUNICATIONS COMMISSION


Jack D. Smith
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D. C. 20554

CC
FCC 84-440
35090

In the Matter of)
)
BOOTH AMERICAN COMPANY)
d/b/a ANDERSON CABLEVISION,)
Complainant,)
)
v.) File No. PA-82-0068
)
DUKE POWER COMPANY,)
Respondent)

MEMORANDUM OPINION AND ORDER

Adopted September 17, 1984 ; Released September 20, 1984

By the Commission:

1. Before the Commission is an application for review filed by Duke Power Company (Duke) of a Memorandum Opinion and Order entered pursuant to delegated authority by the Chief, Common Carrier Bureau, Mimeo No. 3064, released March 22, 1984.¹ In that Order, among other things, the Bureau rejected Duke's use of a normalized tax approach in calculating the tax component of the carrying charges, found that Duke charged an unreasonably high rate, and directed it to refund, with interest, excess payments made by Booth American Company d/b/a Anderson Cablevision (Booth). Duke has sought review only of the rejection of its normalized tax approach.

2. We have fully reviewed the parties' contentions and find no reason to disturb either the rationale or the result of the Bureau's Order. Duke has not provided any arguments which would form a basis for our reaching any different result, but rather has repeated arguments addressed at length and correctly disposed of in the Order.

1 Also before us are Booth's opposition to the application, Duke's reply, and Booth's Motion to Strike and Response. (Booth alleges that a party may reply to an opposition to an application for review only if requested by the Commission, and that the reply shall not exceed 5 pages. In case the Commission accepts the reply, however, Booth has responded to two new matters.) In view of our decision herein, the motion is moot and will be dismissed.

3. Accordingly, IT IS ORDERED, pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115, that the application for review filed by Duke Power Company IS DENIED.

4. IT IS FURTHER ORDERED, That the Motion to Strike and Response filed by Booth American Co. IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Booth American Company
d b a Anderson Cablevision
Complainant.

v. File No. PA 82-0068

Duke Power Company
Respondent.

ORDER

Adopted: March 7, 1991; Released: March 18, 1991

By the Chief, Accounting and Audits Division:

1. On July 6, 1982, Booth American Company, d b a Anderson Cablevision filed the above-captioned complaint pursuant to Section 224 of the Communications Act, 47 S.C. § 224, seeking a Commission determination that Duke Power Company had imposed unjust and unreasonable rates for cable television pole attachments. The Commission ruled in favor of the complainant, but subsequently the United States Court of Appeals for the fourth Circuit reversed and remanded the case for further proceedings. *Duke Power Company v. FCC*, No. 2253 (4th Cir. June 15, 1987), remanding *Booth American Co. v. Duke Power Co.* (PA 82-068), FCC 84-440 (released Sept. 20, 1984). See also *Alabama Power Co. v. C*, 773 F. 2d 362 (D.C. Cir. 1985).

2. On October 2, 1989, counsel for both parties advised that there are no longer issues in controversy and requested dismissal of the pending complaint.

3. Accordingly, IT IS ORDERED, pursuant to Section 1) of the Communications Act of 1934, as amended, 47 S.C. §154 (i), and authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, that the complaint filed by Booth American Company d/b/a Anderson Cablevision IS DISMISSED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

RESPONSE OF FLORIDA POWER & LIGHT COMPANY

EXHIBIT G

LIBERTY T.V. CABLE, INC.

V.

SOUTHWESTERN BELL TELEPHONE COMPANY

MEMORANDUM OPINION AND ORDER

Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of)
LIBERTY T.V. CABLE, INC.)
v.) File No. PA-80-0012
SOUTHWESTERN BELL TELEPHONE COMPANY)

6625

In the Matter of)
TELEPROMPTER OF GALVESTON CABLE)
T.V. CORPORATION)
v.) File No. PA-80-0015
SOUTHWESTERN BELL TELEPHONE)
COMPANY)

In the Matter of)
TOTAL TELEVISION OF AMARILLO)
v.) File No. PA-81-0019
SOUTHWESTERN BELL TELEPHONE)
COMPANY)

MEMORANDUM OPINION AND ORDER

Adopted September 16, 1983 ; Released September 22, 1983

By the Chief, Common Carrier Bureau:

1. Before the Bureau is a petition for reconsideration filed by the Southwestern Bell Telephone Company ("Southwestern Bell"). 1/ Southwestern Bell requests that the Bureau reconsider its Memorandum Opinion and Order, Mimeo No. 001933 (released July 10, 1981) (Order),

1/ Also before us are an "Opposition to Petition for Reconsideration" ("Joint Opposition") and a "Supplementary Affidavit" both jointly filed by Liberty T.V. Cable, Inc. and Teleprompter of Galveston Cable T.V. Corporation on August 19 and 24, 1981, respectively; an opposition by Total Television of Amarillo filed on August 19, 1981; and a "Reply" filed by Southwestern Bell on August 28, 1981. Southwestern Bell also sought a stay of our Order, infra. Such stay request was denied by our Memorandum Opinion and Order in Liberty T.V. Cable, et al v. Southwestern Bell Telephone Company. Mimeo No. 302, released October 30, 1981.

which found that the \$3 per pole annual attachment rate that Southwestern Bell had been charging the complaining cable television system operators was unlawful under Section 224 of the Communications Act, 47 U.S.C. §224. Southwestern Bell argues that we erred in using 15 rather than 1.03 percent of its net pole investment for its cross-arm adjustment. It contends that we also erred in reducing its proposed figure for the maintenance, income tax, and administrative components of the carrying charges.

Net Investment per Bare Pole

2. In our Order, we calculated the net investment per bare pole with an adjustment of 15 percent to exclude crossarms and other items not used or usable for CATV attachments. In doing so, we rejected Southwestern Bell's proposed 1.03 percent adjustment, finding that Southwestern Bell had:

failed to include an allowance for other fixtures and apparatus not essential for pole attachments such as certain braces, fixtures, cable arms, guard arms, etc. See 47 C.F.R. § 31.241. This single flaw is sufficient to undermine this figure as a substitute for the 15 percent estimate used by the Commission

Order at 4. Southwestern Bell challenges this holding and argues that the information called for expanded the requirements of Section 1.1404 (g) of the Commission's Rules and constitutes unlawful rulemaking. Southwestern Bell also contends that the 15 percent figure is inherently unreasonable. These contentions reiterate arguments which we have previously considered and rejected in this proceeding.

3. Southwestern Bell apparently would have us find that, except for the components of the former crossarm retirement unit subaccount (47 C.F.R. §31.8(c) which was abolished in 1965), there are no items in its pole lines account, Account 241 (47 C.F.R. §31.241), that are not usable for CATV attachments. Yet, on its face, Account 241 lists more than 20 items, many of which, in addition to crossarms, have not been shown to be used or useful for CATV attachments. As noted by the cable operators, Section 1.1404(g) is a procedural rule and neither it nor other procedural rules which the Commission adopted in the First Report and Order in Docket No. 78-144, 68 FCC 2d 1585 (1978), preclude the presentation of data relevant to investment in non-cable associated equipment other than crossarms. Our use of the estimated 15 percent adjustment for items unessential for CATV pole attachments is consistent with previous Commission decisions. ^{2/} As Southwestern Bell correctly notes, the 15 percent figure is merely an estimate which can be used

^{2/} See, e.g., Teleprompter of Fairmont, Inc. et al. v. Chesapeake and Potomac Tel. Co. of West Virginia, 79 FCC 2d 232 (1980), aff'd on recon., 85 FCC 2d 243 (1981), and Memorandum Opinion and Order in CC Docket No. 78-144, 77 FCC 2d 187, 199 at note 18 (1980).

when the utility either fails to provide or to document a substitute figure based on actual data. However, Southwestern Bell's attempt to distinguish Teleprompter of Fairmont is unavailing. Contrary to Southwestern Bell's allegations, use of the 15 percent figure was appropriate in this case since it failed to fully substantiate its proposed alternative estimate. ^{3/} Additionally, such use also served to further the Congressional intent of developing simple and expeditious procedures to resolve pole attachment disputes. Under the circumstances and facts of this case, use of the 15 percent figure was neither unreasonable nor rulemaking.

Carrying Charges

4. Southwestern Bell also seeks reconsideration of our rejection of certain elements of its proposed carrying charges. First, it argues that its net figure for carrying charges should have been accepted because the complaining cable operators had not proposed an alternative carrying charge and thus failed to carry their burden. It quotes our statements that:

In the absence of a direct attack on any component of the [utility 's] carrying charge, we generally accept [the utility's net carrying charge figure] unless it contains an element which on its face raises questions requiring further investigation.

4/

However, unlike the cases relied upon, the instant case does involve direct attacks by complainants on components of the telephone company's carrying charges. Accordingly, Southwestern Bell's reliance on such cases is misplaced.

^{3/} The 15 percent adjustment is intended to exclude not only crossarms and the hardware used to support crossarms but also all of that part of the Account 241 pole plant which is not normally used for cable television attachments. For example, it would normally exclude towers and extremely tall poles. Therefore, if a utility wishes to provide a more exact figure for the net cost of a bare pole than that obtained by the Commission's methodology, it should begin with the historic cost (net of depreciation) of a bare wooden pole of the heights used for CATV attachments, and add to that the cost of specific items of hardware (including guys and anchors, unless the cable company supplies its own or pays a separate charge for them) that are used by the cable company. Of course, it would have to supply the specific detail to support all of its figures, including the detailed makeup of the remainder of Account 241 so that we could verify that the totals correspond with the total amount in the account.

^{4/} Teleprompter Corp. v. Northwestern Bell Tel. Co., Mimeo No. 000345, released April 21, 1981, at 6, para. 16, and Teleprompter Corp. v. Mountain States Tel. & Tel. Co., Mimeo No. 000446, released April 23, 1981, at 4, para. 11, (emphasis added).

5. Maintenance. Southwestern Bell also maintains that the Bureau erred by rejecting loading factors such as social security taxes, relief and pensions and Account 612 (Other maintenance expenses) in the maintenance component of the carrying charges. Its arguments in this connection were previously considered and expressly rejected in our Order. 5/ While certain refinements of the carrying charges are always possible, we agree with the cable operators that offsetting refinements would be required for accuracy and complete fairness and that use of such refinements would unduly complicate the process of determining the maximum lawful rate, in contravention of the statutory mandate in favor of simplicity and expedition. 6/ The kind of detail which would be necessitated were we to attempt the refinements proposed by Southwestern Bell, as well as appropriate offsetting refinements, would involve questions of allocation, division of accounts, new methodology, in short a full-blown rate case which Congress specifically rejected. 7/ Under the circumstances, Southwestern Bell has not persuaded us that we should reconsider our Order insofar as it excluded loading factors and Account 612 as bearing only a minimal relationship, if any, to CATV pole attachments.

6. Taxes. In our Order, we calculated the tax component of Southwestern Bell's carrying charge using reported company-wide, i.e. regional, data from its Form M. We rejected Southwestern Bell's proposed figure -- not because it was based on statewide data -- but because it was based, in part, on estimates or anticipated taxes and was

5/ However, our Order did include all taxes paid in the taxes component of the carrying charges, and therefore should include social security taxes.

6/ See Teleprompter Corporation v. South Central Bell Telephone Co., Mineo No. 001803, released June 29, 1981, at note 3. Such offsetting refinements would not only consist of exclusion of portions of the expense accounts, but also a detailed breakdown of the pole line account to include only that part of the pole plant normally used for cable television attachments. (see note 3.) The Commission's methodology is predicated on a simple procedure by which all of the parties can predict the FCC-determined maximum just and reasonable rate, without a formal complaint in most instances, by applying the data from publicly available records (the FCC Form M or the FERC Form 1) to the Commission's formula. It relies on balancing. Thus, while small portions of some accounts which admittedly relate to cable attachments (such as loading factors) are omitted, other entire accounts which contain non-cable-related expenses are included. The utility has disregarded this approach. Instead, it adjusted certain expense categories upward by including loading factors, but it made no effort to make the concomitant adjustments downward to exclude those expenses and investments not related to cable attachments.

7/ See Senate Report No. 95-580, 98th Congress, 1st Session (1977).

not limited to taxes actually paid. This was consistent with the intent of the governing statute to charge cable operators only with actual costs and expenses. See 47 U.S.C. §224(d)(1). It also was consistent with the Commission's prior determination that only taxes actually paid should be used in calculating carrying charges. See, e.g., Teleprompter Corp. et al. v. South Central Bell Telephone Co., Mimeo No. 001803, released June 29, 1981, at para. 13. Southwestern Bell's reliance on certain Treasury regulations concerning "normalization" procedures with respect to investment tax credits and accelerated depreciation is misplaced since, as correctly noted in the Joint Opposition, those regulations apply only to full ratemaking proceedings and not to pole attachment proceedings. The method advanced by Southwestern Bell to estimate taxes would introduce needless complexity and uncertainty into determining appropriate rates for attaching to utility poles, contrary to the Congressional intent that the Commission's pole attachment program be simple and expeditious. 8/

7. Administration Expense. Southwestern Bell also seeks reconsideration of our disallowance of its Accounts 640 (General commercial administration), 645 (Local commercial operations), 668 (Insurance) and 669 (Accidents and damages) in computing the administrative component of the carrying charges. Insofar as Accounts 640 and 645 are concerned, Southwestern Bell has not carried its burden of showing that its expenses under such accounts are related more than minimally to CATV attachments. Thus, it has not shown that any portion of these expenses are properly chargeable to cable operators. On the other hand, Accounts 668 and 669 have been accepted in computing the administration factor in recent decisions and we will grant reconsideration of our Order which disallowed those accounts. 9/ With regard to calculating the administrative expense component, we previously have determined that we will use Accounts 661-665, 668, 669, 674 (General services and licenses) 10/ and 677 (Expenses charged construction-Cr.). See, e.g., Winchester T.V. Cable Company v. Chesapeake and Potomac Telephone Company of Virginia, Mimeo No. 1126, released December

8/ Id.

9/ The cable operators contend that they already are paying insurance costs "far greater than their reasonable share." (Joint Opposition at 16). However, whether the level of charges required under their current lease agreements for insurance is unreasonable is an issue not here before us. Nor is the present record adequate to enable us to determine whether the cable operators already are paying more than a reasonable share of the utility's insurance costs, as they allege.

10/ Account 674 includes license contract for expenses. Therefore, our new administrative component will replace both the administrative and license contract components in the Order.