FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)))	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.	))	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)))	Case No. 06-718-EL-ATA

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TESTIMONY OF

PATRICIA KRAVTIN

ON BEHALF OF

OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

February 26, 2009

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INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Patricia D. Kravtin. I am an economist in private practice specializing in the analysis of telecommunications and energy regulation and markets. My business address is 57 Phillips Avenue, Swampscott, Massachusetts.

Qualifications

Q. PLEASE DESCRIBE YOUR PROFESSIONAL AND EDUCATIONAL BACKGROUND.

A. I received a B.A. with Distinction in Economics from the George Washington University. I studied in the Ph.D. program in Economics under a National Science Foundation Fellowship at the Massachusetts Institute of Technology (M.I.T.). My fields of concentration at M.I.T. were government regulation of industry, industrial organization, and urban and regional economics. My professional background includes a wide range of consulting experiences in regulated industries. Between 1982 and 2000, I was a consultant at the national economic research and consulting firm of Economics and Technology, Inc. (ETI) in that firm's regulatory consulting group, where I held positions of increasing responsibility, including Senior Vice President/Senior Economist. Upon leaving ETI in September 2000, I began my own consulting practice specializing in telecommunications, cable, and energy regulation and markets.

I have testified or served as an expert witness on telecommunications matters in proceedings before over thirty state, provincial, and federal regulatory commissions, including the Federal Communications Commission ("FCC"), the Federal Energy Regulatory Commission ("FERC"), and the Canadian Radio-television and Telecommunications Commission ("CRTC"). In addition, I have testified as an expert witness in antitrust litigation before a number of United States district courts on matters relating to telecommunications competition, market power, and barriers to entry, and in regard to Section 253 of the Telecommunications Act of 1996 ("the Act") concerning use of public rights-of-way. I have also testified before a number of state legislative committees and served as advisor to a number of state regulatory agencies.

Q. COULD YOU BRIEFLY DESCRIBE YOUR EXPERIENCE OF PARTICULAR RELEVANCE TO THIS PROCEEDING

A. Yes. I have testified as an expert concerning access to poles, ducts, conduits, and rights-of-way before state, provincial, and federal agencies on numerous occasions. Most recently, I submitted expert reports in the Federal Communications Commission's current pole attachment rulemaking proceeding (WC Docket No. 07-245, RM 11293, RM 11303). I also submitted a declaration in the FCC's earlier pole attachment proceeding, CS Docket No. 97-98. Additionally, I submitted testimony before the FCC in pole attachment complaint proceedings brought against electric utilities Gulf Power and Dominion Virginia Power. At the state level, I have testified on pole attachment rates, terms and conditions pertaining to electric utilities before the New Jersey Board of Public Utilities, the Arkansas Public Service Commission, and the Ontario Energy Board. I have also testified on matters pertaining to access to poles and conduit of incumbent local exchange carriers ("ILECs") in proceedings before the Georgia Public

Service Commission, the South Carolina Public Service Commission, the Public Service Commission of the District of Columbia, and the New York Public Service Commission.

Q. HAVE YOU PREPARED A DETAILED SUMMARY OF YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A. Yes. A detailed resume summarizing my training, previous experience, and prior testimony and reports is provided as Attachment 1 to this testimony.

Q. WHAT HAVE YOU RELIED UPON IN PREPARING THIS TESTIMONY?

A. I have relied on my education, training, research, and experience in economic analysis, and my prior experience in the areas of telecommunications and utility regulation as outlined above and further detailed in Attachment 1. I have considered various data and information in forming my opinions, including data available on the Federal Energy Regulatory Commission ("FERC") Form 1 for Duke Energy-Ohio ("Duke"), and materials produced in the discovery taken in this matter.

Q. UNDER WHAT TERMS ARE YOU BEING COMPENSATED FOR THIS TESTIMONY?

A. I am being compensated for the time I spend on this matter at my standard rate of $375 per hour. I will also be reimbursed for any travel and miscellaneous out-of-pocket expenses incurred in connection with this litigation. My compensation is not contingent on the outcome of this litigation or my analysis.

Purpose and Summary of Testimony

Q.CAN YOU PLEASE DESCRIBE YOUR ASSIGNMENT AND THE PURPOSE OF YOUR TESTIMONY?

A. I was asked by counsel for the Ohio Cable Telecommunications Association ("OCTA") to provide testimony on matters raised in this proceeding pertaining to cable company rental of space on Duke's poles and conduit (hereafter referred generically as "pole attachments"). My testimony will address the appropriate rental rates that Duke should be permitted to charge cable operators for pole attachments as well as the terms and conditions under which Duke would provide access to these essential facilities. In particular, my testimony will provide specific rate results for pole and conduit rentals derived from a proper application of the rate formula adopted by the Public Utilities Commission of Ohio ("PUCO") based on the well-established FCC formula, including any adjustments required to ensure the accuracy and integrity of the underlying data inputs upon which the formula relies.

My testimony will also address the economic and policy reasons for setting pole attachment rental rates below the maximum rate established by the formula and closer to the lower range of reasonable rates, i.e. marginal costs, permitted under Section 224 of the Communications Act. Finally, my testimony addresses the importance of setting terms and conditions for pole attachment rentals that do not lend themselves to discretionary, discriminatory application and that would allow the utility, as the monopoly owner of the poles, to impose excessive costs on third-party cable attachers that competitively disadvantage the cable operator vis-à-vis the utility, an affiliate or other company in which the utility has an interest, or the incumbent telephone company, for which the potentially onerous terms and conditions do not apply.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. This testimony addresses and explains the following main points:

- In adopting the FCC formula for setting rates for pole attachments, the PUCO joined the overwhelming majority of states who rely on the FCC approach in setting rates for third-party occupancy of essential utility pole and conduit facilities. The FCC formula has withstood the test of time as a straightforward, cost-based approach for determining just and reasonable rates for pole and conduit attachments.

- A major feature of the FCC formula is that it can be applied with a minimum of private, administrative effort using publicly available information reported in the FERC uniform reporting system and involving little if any regulatory intervention. In Ohio, because pole rates are tariffed and set within the context of a formal rate proceeding, data inputs to the formula may be rate case numbers that vary from those reported on the FERC Form 1.

- In applying the FCC pole rate formula in this case, there are several areas where Staff has substituted rate case numbers in place of those reported on the FERC Form 1. These include the use of data adjusted to conform to the rate year (twelve months ending March 2008), certain investment and expense data generated internally by the utility, and Staff's own recommendations for certain inputs such as rate of return and depreciation accrual rate.

- Because the areas where Staff's pole rate formula calculation diverges from the FCC methodology have been subject to a rate case quality review by Staff, I am generally accepting of Staff's methodology. I have relied on the same input data used by Staff in my own rate calculations, with only a couple of exceptions necessary to correct for demonstrated inaccuracies and inconsistencies relating to Duke's pole plant (account 364) accounting data, with respect to underlying pole investment dollars and units in service (i.e. pole count).

- My correction to the pole count figure is necessary to remove an internal inconsistency between the numerator and the denominator of the net bare pole cost component of the

formula. I make an upward adjustment to the pole count number used in the denominator to reflect the test year period (twelve months ending 2008 as opposed to calendar year 2007), consistent with the net pole investment figure used in the numerator. To make this adjustment, I apply the same proportional increase to the number of poles in service that Duke made to its own gross pole plant investment figure to conform it to the test year period.

- My correction to the pole investment dollars is necessary to remove inaccuracies in the data resulting from the inclusion of unreliable and undocumented General Ledger 106 accounting data, and the apparent inconsistency between Duke's pole count figure and pole investment amounts recorded in GL 106. My pole rate calculations rely on the amount of pole plant booked to Duke's GL 101 (Plant in Service) account as reported in Duke's Continuing Property Records. Because the CPR data is of year-end 2007, I have adjusted those amounts upward to conform to the rate case test year, along with corresponding upward adjustments to both accumulated depreciation and accumulated deferred tax amounts.

- Revisions made by Duke in this rate case to its GL 106 accounting for poles (account 364) are not sufficiently supported or comprehensive so as to satisfy the standard of transparency and accuracy inherent in the FCC formula methodology. Plus, the scant documentation that Duke has provided with respect to its revisions raises even more questions about the seemingly arbitrary and undocumented nature of Duke's GL 106 estimating process, both as it pertains to the original assignment to account 364 and the recent revisions.

- Another very important reason why GL 106 account 364 amounts should not be included in the pole investment used in the rate formula calculation is that doing so would result in an apparent mismatch between the pole investment number and the pole count number used to derive the net bare pole cost component of the formula. The net bare pole cost component is derived by dividing booked pole investment dollars by a number of poles identified by the utility. Therefore, including investment associated with multiple prior years of "non-unitized" investment (such as included in Duke's GL 106 accounting for poles) in the numerator, without including the additional number of poles corresponding to that pole plant in the denominator (as occurs given inherent time lags in Duke's classifying and

inventorying processes), if uncorrected, will result in an over-statement of the net bare pole cost and the pole rate derived on the basis of that cost.

- After making needed corrections to the data inputs (i.e., gross up to pole count figure to conform to the rate year, and removal of the unreliable GL 106 pole investment amounts), I calculate a maximum pole rental rate of **$6.05** per pole per year for one foot of space. My calculation confirms the reasonableness of Staff's moderated approach limiting the pole rate increase to 50% of the existing $4.25 rate or $6.40, but shows that even Staff's moderated proposed rate increase is higher than justified based on cost.

- As an independent check on the reasonableness of my rate formula result, I have compared my result for Duke Energy-Ohio with formula rate results and/or rates in effect for other Duke Energy utilities as well as other peer utilities in Ohio. The benchmark analysis that I perform indicates my pole formula rate calculation, and even more so Staff's, produces a rate that is relatively high as compared to a peer group of comparable electric utilities.

- A pole attachment rate below $6.00, and closer if not equal to, the existing pole attachment rate of $4.25, is supported on important economic and policy grounds. Even at the current rate, and especially accounting for make-ready charges cable operators pay in addition to the rental rate, Duke stands to recover *much more* than its marginal cost of attachment. From an overall societal standpoint, the closer the rate Duke charges is to marginal cost, the more efficient the outcome in terms of maximizing the productive use of societal resources, maximizing the value to consumers (most of whom are also electricity subscribers) accruing from the benefits of competitive market performance in the final (broadband) service market, and enhancing productivity and economic development opportunities in the state.

- Like poles, conduits are "essential facilities" capable of serving as bottlenecks to facilities-based competition for which cable operators have not had similar opportunities to construct their own structures or to join together to share a common facility as have incumbent telephone and electric utilities in the past. Accordingly, the economic and policy reasons in support of using the regulatory formula rate for poles applies just as forcefully to conduit.

- Applying the FCC rate formula for conduit to Duke's fully allocated cost for the test year ending March 31, 2008, using specific rate case data when available and the FCC's one-half duct presumption (i.e., attributing one-half of the conduit capacity to the attacher), I calculate a maximum rental rate of **$0.55** per duct foot of conduit occupied. To the extent data is available to the PUCO that would support use of a higher number of inner ducts for Duke, in keeping with FCC policy, that number should be used in the conduit rate formula in lieu of the half-duct convention. For example, with an average of three inner ducts per conduit, Duke's maximum rental rate would be only **$0.36** per duct foot of conduit space.

- In addition to an excessive attachment rate, Duke's proposed tariff contains a number of terms and conditions that also work to undermine the effectiveness of pole attachment regulation in stemming monopoly abuses, some, but not all of which are addressed by Staff. Many of the proposed provisions would enable the utility to further exploit its monopoly ownership of the pole network and engage in anticompetitive behavior by creating barriers to entry and other impediments to competition in the final service market (i.e. broadband).

- Effective regulatory oversight of both price and non-price aspects of pole attachment regulation is needed to help ensure an outcome that appropriately balances the interests of the utility and the third-party attacher, and at the same time promotes the public policy goals of a competitive telecommunications market and the widespread deployment of advanced information-age services and technology. There are several important and interrelated economic and public policy criteria underlying a set of core principles for the PUCO to apply in evaluating the appropriateness of individual tariff provisions. These include competitive neutrality, effectively competitive or free market, cost causation, and the public interest.

- Numerous provisions in Duke's proposed tariff are shown to violate these core principles of effective regulation, including among others, provisions for new, excessively high penalties for unauthorized attachments and safety violations that would apply on a discriminatory and punitive basis to third-party cable attachers, and provisions that would give Duke unfettered discretion as to whether to permit an additional attachment, the type of attachment that would be permitted, the services that could be provided over the attachment, the expiration of the

agreement, and all other terms and conditions and other requirements applicable to the attachment including costs that can be recovered from the third-party attacher pertaining to pole replacements and rearrangements.

POLE ATTACHMENT RATES

The PUCO formula, by tracking the well-established FCC formula, is a reasonable, economically appropriate, cost-based approach for determining just and reasonable pole attachment rates.

Q. PLEASE DESCRIBE THE GENERAL APPROACH FOLLOWED BY THE PUCO WITH RESPECT TO SETTING RATES FOR POLE ATTACHMENTS BY CABLE OPERATORS AND OTHER THIRD PARTY ATTACHERS.

A. The formula adopted by the PUCO in 1982 for setting rates for utility pole attachments tracks the formula established by the FCC for this purpose.[1] In adopting the FCC formula, the PUCO joined the overwhelming majority of states who rely on the FCC approach in setting rates for conduit and pole attachments.[2] The FCC formula has withstood the test of time as a straightforward and economically appropriate approach for determining just and reasonable pole

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[1] See PUCO Case No. 81-1338-TP-AIR, *In the Matter of the Application of Cincinnati Bell for Authority to Adjust its Rates and Charges and to Change Its Tariffs*, Opinion and Order, dated January 7, 1983, see also PUCO Case Nos. 81-1058-EL-AIR, 82-654-EL-ATA, Opinion and Order dated December 5, 1982.

[2] The FCC formula is applied directly by the FCC in 32 states (including the District of Columbia) , and of the 19 states that have certified to regulate pole attachment rates, the majority use a formula that closely (or precisely) tracks the FCC formula. See FCC Public Notice, "States that have Certified that They Regulate Pole Attachments," 7 FCC Rcd 1498, 1992 FCC LEXIS 931 (Released February 21, 1992).

attachment rates and conduit rentals. A key attribute of the FCC methodology is that it is based on publicly reported and verifiable data.[3]

Q. WHAT DO YOU MEAN WHEN YOU SAY THE FCC FORMULA IS AN ECONOMICALLY APPROPRIATE APPROACH TO SETTING RATES?

A. The FCC formula is an economically appropriate approach in that it follows cost allocation principles well-established in the economics literature. Under the FCC methodology, the recovery of the cost of the pole attachment is based upon the concept of cost causation (i.e., cost-causer pays). Such costs reflect costs that would not be borne by the utility *but for* the attacher, including a normal (reasonable) return to capital. Costs designed in this manner prevent any potential situation of cross-subsidy between the utility pole owner and the third-party attacher.

The principle of cost causation is firmly established in Section 224 of the Communications Act upon which the FCC formula for pole attachments is based. Consistent with the principle of cost causation, Section 224(d) links the pole attachment rental to marginal costs, by establishing a range of reasonableness that has marginal costs as a lower bound, and fully allocated cost as an upper bound. The actual FCC rate formula adheres to the *greater* fully allocated cost standard described in Section 224(d), which by definition, allows the utility to recover through the rental rate ongoing costs *much more* than marginal cost.[4] It does so by allowing recovery of a cost-causative portion of the utilities' operating expenses and actual capital costs (including overall return to capital) attributable to the entire pole or conduit, based on booked costs.

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[3] In the case of electric utilities, there are a couple of exceptions where the data relied on in the FCC rate formula is provided from the internal records of the utility. The first is the number of poles, or number of duct feet of conduit. The second is the depreciation accrual rate at the plant account level.

[4] *See Alabama Power*, 311 F.3d at 1363, 1370.

Q. DESCRIBE HOW THE FCC CABLE FORMULA ALLOCATES A COST-CAUSATIVE PORTION OF THE UTILITY'S COSTS ASSOCIATED WITH THE ENTIRE POLE.

A. Under the FCC cable formula, the costs of the entire pole - including both direct (usable) and common (unusable) space alike - are allocated to an attacher based on an attacher's occupancy of usable space on the pole. The costs associated with a third-party pole attachment are causally linked to the amount of space occupied by the attachment, since those costs vary with the relative use or occupancy of space by those attaching entities and *not* according to the number of attaching entities.

This concept of a cost-causative linkage based on the relative use or direct occupancy of space is a common and widely-accepted practice in the leasing of property and other facilities throughout the private and public sectors of the economy. The cost allocation approach embodied in the cable rate formula follows cost causation principles in a manner directly analogous to other well accepted familiar contexts, such as an apartment house, as cited in the legislative history of the 1978 Pole Attachments Act:

> The renter of one of the ten units pays the cost of that unit plus one-tenth of the cost of all common areas. He does not pay one-half the cost of the common areas just because only one other person occupies the other nine units, but rather he pays his one-tenth share of all the costs attributable to the building.[5]

With the apartment building analogy serving as a model, Congress specifically designed the cable formula to allocate an appropriate share of the cost of the entire pole to cable attachers.

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[5]123 Cong. Rec. 5080 (1977)(Statement of Rep. Wirth).

> Cable would pay its share of not just the costs of...usable space but of the total costs of the entire pole, including the unusable portion (below grade and between minimum clearance levels.) This allocation formula reflects the concept of relative use of the entire facility. To the extent that a pole is used for a particular service in greater proportion than it is used for another service, the relative costs of that pole are reflected proportionately in the costs of furnishing the service which has the greater amount of use. [6]

Q. WHAT IS THE FCC FORMULA FOR CALCULATING THE MAXIMUM RENTAL RATE FOR POLES AS APPLIED TO ELECTRIC UTILITIES?

A. Consistent with Section 224(d) of the Communications Act and the principles of cost causation explained above, the FCC formula calculates a maximum annual pole attachment rent for cable operators by taking the sum of the actual capital costs and operating expenses of the utility attributable to the entire pole and multiplying that number by a allocator based on the attacher's relative use of the pole. In practical terms, the formula consists of the following three major components: (1) the net investment per bare pole, (2) a carrying charge factor, and (3) the percent of capacity (i.e., total usable space) occupied by an attacher.[7]

Expressed as an equation, the FCC formula applicable to cable operators is as follows:

Maximum Pole Rental Rate =

[Net Bare Pole Cost] x [Carrying Charge Factor] x [Usage Percentage]

Attachment 2 to my testimony describes in detail each of the three major components of the FCC pole attachment formula and how they are applied in the formula for electric utilities.

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[6] S. Rep. No. 95-580, 95th Cong., 1st Sess. 20 (1977) (emphasis added).

[7] *See FCC Consolidated Partial Order on Reconsideration, CS Docket 97-98, 97-151, FCC 01-170 (FCC 2001 Pole Order)*, at Appendix D-2 (May 25, 2001) (setting forth the specific formulas and FERC accounts to be used when calculating the pole rate for electric utilities).

Based on appropriate corrections to certain data inputs used in Staff's calculation of the pole rate formula, Duke should be allowed to charge cable operators an annual pole rental rate of no more than $6.05 per foot of pole space.

Q. GIVEN THE STATE OF OHIO IS CERTIFIED TO REGULATE POLE ATTACHMENTS, ARE THERE AREAS WHERE THE PUCO'S APPLICATION OF THE POLE RATE FORMULA MAY DIVERGE FROM THE FCC METHODOLOGY?

A. Yes, there are. The overarching concept underlying the FCC formula is that it can be applied in a straightforward manner, using publicly available information as reported in the FERC uniform reporting system, such that it can be updated annually with a minimum of private, administrative effort, and little if any regulatory involvement. In Ohio, pole rates are tariffed and set within the context of a formal rate proceeding, where many of the data inputs to the formula are subject to independent review and determination. The corresponding figures for formula inputs which are provided in the rate case filings may vary for a host of reasons from the numbers publically reported by the utility in the FERC Form 1 reporting system. In applying the FCC pole rate formula in this case, there are a number of areas where Staff has substituted rate case numbers in place of publicly reported data from the FERC Form 1.[8]

Q.PLEASE IDENTIFY THOSE AREAS WHERE STAFF'S APPLICATION OF THE POLE RATE FORMULA DIVERGES FROM THE FCC METHODOLOGY.

A. First, in most, but not all cases, Staff's application of the pole rate formula relies on input data that conform to the test year of the rate case, i.e., the twelve months ending March 31, 2008,

[8] See Staff Report at 23-24.

whereas the FCC methodology relies strictly on calendar year-end data as reported in the annual FERC Form 1 reporting system. For purposes of this case, the latest FERC Form 1 data available is for the calendar year 2007, i.e., the twelve months ending December 31, 2007.

Second, in the computation of accumulated deferred income taxes (used in the calculation of net plant investment), Staff includes FERC Account 255 (Accumulated Deferred Investment Tax Credits) in accordance with PUCO rate case practice, in addition to the four accounts (Accounts 281, 282, 283, and 190) included in the FCC methodology.

Third, Staff relies on input data generated from Duke's internal accounting records at a level of disaggregation below that publicly available in the FERC uniform reporting system. For accumulated depreciation (used in the calculation of net plant investment), Staff relies on data provided by Duke at the level of the individual plant account, whereas the lowest level of aggregation in the FERC Form 1 for accumulated depreciation is at the level of total distribution plant. For accumulated deferred taxes, and also for the tax and administrative & general expense components of the carrying charge factor, Staff relies on data provided by Duke at the level of distribution plant, whereas the lowest level of aggregation in the FERC Form 1 for these items is at the level of total electric plant in service.

Fourth, for the rate of return component of the carrying charge factor, Staff uses the midpoint of the rate of return range it is recommending the PUCO adopt in this case, which is calculated at 8.61%. The FCC formula dictates the use of an actual rate of return authorized by the state commission, where one is available. The last authorized rate of return by the PUCO was 8.24%.

Finally, Staff uses its recommended depreciation accrual rate of 2.23% for pole plant in the calculation of the depreciation carrying carry factor, where the FCC formula would rely on a utility-provided accrual rate.

Q. DO YOU ACCEPT THE AREAS OF DIVERGENCE FROM THE FCC FORMULA REFLECTED IN STAFF'S POLE RATE CALCULATIONS FOR PURPOSES OF THIS RATE CASE?

A. Yes, I do. As a general proposition, it is acceptable to rely on numbers internally generated by the utility (and/or recommended by the staff) in applying the FCC rate formula in the context of a general rate proceeding such as this case, where those numbers have been subject theoretically to a full and comprehensive rate case review by commission staff or some other third party, and otherwise appear to be accurate and reasonable figures. Of course, absent a full and comprehensive rate case quality review of the utility's operations and finances, there is the danger that parties would selectively propose adjustments in a manner that would be to that party's own pecuniary interest to do so.

Because the areas where Staff has diverged from the FCC methodology have been subject to a rate case quality review by Staff, I am generally accepting of Staff's methodology. In particular, I have relied on the same input data used by Staff in its pole rate formula calculations in my own rate calculations (presented in Attachment 4 to this testimony), with only a couple of exceptions necessary in my opinion to correct for demonstrated inaccuracies and inconsistencies relating to Duke's pole plant (Account 364) accounting data, with respect to both underlying investment dollars and units in service (i.e., pole count). With respect to the rate of return input, I believe it is acceptable to use the midpoint of the range of the rate of return recommended by Staff in this

case, but only as a temporary placeholder for the actual rate of return authorized by the PUCO in this case. Similarly, I am comfortable using Staff's recommended depreciation accrual rate as a proxy for the accrual rate authorized by the PUCO, subject to change should the PUCO adopt a different rate.

Q. PLEASE EXPLAIN THE CORRECTION YOU MADE TO STAFF'S POLE RATE CALCULATIONS REGARDING THE UNITS OF POLES IN SERVICE.

A.As explained above, Staff's pole rate calculations, like the other rate case analyses presented in the Staff Report, are based on a test year defined as the twelve months ending March 31, 2008. However, the number of poles Staff uses in the rate formula to calculate the net bare pole cost is a pole count (248,901) identified by Duke to be as of the end of the calendar year 2007.[9] I believe the mismatch arose because the original Duke pole rate calculation upon which Staff built its own analysis was calculated on a calendar year basis using 2007 FERC Form 1 data consistent with the FCC methodology.[10] Duke subsequently revised most of the data inputs used in its pole rate calculation to reflect rate case test year period data rather than 2007 FERC Form 1 data, including a gross-up of both the dollar amount of gross pole plant and accumulated depreciation among others. However, Duke did not correspondingly gross-up its pole count figure, which is particularly problematic given the way the formula computes net pole plant investment.

Q.WHY IS IT SO IMPORTANT TO GROSS-UP THE POLE COUNT TO REFLECT A RATE YEAR NUMBER CONSISTENT WITH OTHER FORMULA INPUTS?

[9] See Testimony of Donald Storck, Attachment DLS-2.

A. The net bare pole cost component of the formula is calculated by taking net pole plant investment and dividing it by the number of poles in service (see Attachment 2 to this testimony for a detailed description of the FCC pole rate formula). Thus, there is an internal inconsistency between the numerator and the denominator of the calculation if the numerator is adjusted upward, but the denominator is not. The correction I made was a corresponding upward adjustment to the pole count number (i.e., the denominator of the net bare pole cost calculation) to reflect the test year period, consistent with other rate case test year data Staff relies on in its formula and which I have accepted for purposes of this rate case. I made this correction by simply applying the same proportional increase (1%) to the number of poles in service that Duke made to its gross pole plant figure to reflect the rate case test year period versus the calendar year 2007. The result is a revised pole count for the test year of 251,358. (The pole count adjustment is shown in Attachment 4 to this testimony containing my pole rate formula calculations).

Q. IS IT PROBLEMATIC TO RELY ON A POLE COUNT THAT REFLECTS AN ESTIMATED VERSUS ACTUAL NUMBER OF POLES IN SERVICE FOR PURPOSES OF THE POLE RATE FORMULA?

A. While it would be preferable to use an actual versus estimated pole count figure in the rate formula calculation, the fact is that the year-end 2007 pole count figure that Duke identified and that Staff uses in its pole rate calculation is itself not a publicly reported number. Duke's pole count figure has not been independently validated by Staff or any other third party as representing an accurate or actual count of poles in the field. Duke's pole count figure came from the GIS geographical data base referred to as the "Small World System" and was given to

[10] Id.

Duke witness Donald Storck in an email from a Duke employee named Nancy Musser.[11] According to Mr. Storck's deposition testimony, that email is the only documentation he has in support of Duke's pole count number.[12]

Moreover, it does not appear possible to reconcile the pole count number from Duke's GIS or Small World system with the detailed asset reports contained in the Continuing Property Records (CPR) General Ledger accounting for plant account 364 - the source of pole plant investment dollars used in the rate formula.[13] Duke accounting witness James Dean indicated he was generally unfamiliar with the pole count generated from the GIS and the manner in which it was determined.[14] Duke was specifically asked in discovery to identify the number of distribution poles in service as of year-end 2007 that were not recorded in the CPR Ledger for plant account 364, and in response Duke indicated there were no pole counts contained in the CPR.[15]

Q. IS THERE ANOTHER REASON TO QUESTION THE ACCURACY OF DUKE'S YEAR –END 2007 POLE COUNT NUMBER AND THAT FURTHER SUPPORTS

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[11] See Deposition of Donald Storck, dated January 29, 2009, at 12. (Excerpts of Donald Storck's deposition dated January 29, 2009, pertaining to this cite and those following, provided in Attachment 6 to this testimony.)

[12] Id.

[13] See Deposition of James Dean, dated January 30, 2009 at 17-18. (Excerpts of James Dean's deposition dated January 30, 2009, pertaining to this cite and those following, provided in Attachment 7 to this testimony.)

[14] Deposition of James Dean, dated December 15, 2008, at 43-44. (Excerpts of James Dean's deposition dated December 15, 2008, pertaining to this cite and those following, provided in Attachment 8 to this testimony.)

[15] Duke Response to OCTA INT 03-031. (Duke's discovery responses cited in this testimony are provided in Attachment 9 to this testimony.) According to Duke: the "Continuing Property Records does not have a count of poles in service on pages 1-63 [GL 101] of the CPR Ledger," and that "Ledger entries made for in service accounting recorded in GL 106 do not reflect a number of poles in service." See also Duke Response to OCTA INT 03-32, where Duke further clarifies that while there is a column labeled "quantity" in the GL 106, it is an "'accounting'" quantity associated to these entries"[that]does not represent a quantity of poles added."

MAKING A GROSS-UP ADJUSTMENT TO CONFORM THAT NUMBER TO THE RATE YEAR?

A. Yes. In addition to Duke not providing any real documentation in support of the accuracy of the year-end 2007 pole count figure of 248,901 upon which Staff relies, the deposition testimony of Duke witness Steve Adams describes a lag between the time poles are placed in service and the point at which those poles would actually appear in a pole count generated by the GIS system.[16] Accordingly, even the 248,901 figure Duke identifies as the number of poles in service as of year-end 2007 may understate the true number of poles in service as of that point in time.

Q. CAN YOU SUMMARIZE THE ISSUES OF CONCERN YOU HAVE RAISED REGARDING DUKE'S POLE COUNT FIGURE?

A. Yes, there are several: (1) The time period of the count, i.e., as of year-end 2007, does not conform to the rate year, i.e., twelve-months ending March 31, 2008, resulting in a mismatch with most of the other data inputs in Staff's formula calculation, most notably, the pole plant investment figure which is divided by the pole count in the rate formula; (2) There is no real documentation supporting the number of poles identified by Duke as of year-end 2007; (3) Duke is unable to identify the number of poles as of year-end 2007 that were not recorded in the CPR Ledger, the source of pole plant investment dollars used in the rate formula; (4) It does not appear possible to reconcile pole counts identified within Duke's geographic database with

[16] Deposition of Steve Adams, dated January 30, 2009, at 11-13. (Excerpts of Steve Adams' deposition dated January 30, 2009, pertaining to this cite and those following, provided in Attachment 10 to this testimony.) According to Mr. Adams, "as jobs are designed in the field whether it's adding pole lines or gas mains or whatever the job is, that work is designed in the GIS system and eventually posted to the GIS system." The actual appearance of the pole counts in the GIS system does not occur until such time as an "office coordinator" makes changes to the original work request as designed in Small World to reflect those that have taken place in the field and closes out the job, "at which point those poles that were added will be available in the GIS system for others to see."

Duke's CPR accounting ledgers for plant account 364; and (5) Time lags in the field inventory process suggest Duke's year-end 2007 pole count number is likely understated relative to the actual number of poles in the field as of that date.

Q. GIVEN THESE ISSUES OF CONCERN, WHAT HAVE YOU DETERMINED TO BE THE MOST APPROPRIATE APPROACH TO FOLLOW WITH RESPECT TO THE POLE COUNT FOR PURPOSES OF THE RATE FORMULA CALCULATION?

A. Given the multiple issues of concern, and based upon my review of Duke's deposition testimony and discovery responses, it would appear that a complete and accurate up to date accounting of the number of poles in service (i.e., in the field) does not exist at the present time. Absent a meaningful opportunity to validate Duke's original year-end 2007 pole count figure, or to reconcile that count with the actual number of poles in the field as of March 31, 2008, I believe the approach I have taken, i.e., to accept Duke's original year end 2007 pole count as a given, but to then gross it up by the same proportion Duke applied to arrive at a test year amount of gross pole plant, is the most reasonable option available to ensure a consistent test year methodology and a more accurate rate result.

Q. PLEASE EXPLAIN YOUR CORRECTION TO THE POLE RATE FORMULA INVOLVING THE UNDERLYING PLANT 364 INVESTMENT AMOUNT.

A. The Account 364 pole plant investment figure of $225.3-million used in Staff's pole rate formula calculation includes the balance in Duke's GL 101 (Plant in Service) for account 364 *plus* the revised balance in Duke's GL 106 (Completed Construction Not Classified) allocated to

account 364, adjusted to reflect the test year ending March 2008.[17] The revisions Duke made in this rate case to the GL 106 amounts allocated to account 364 are intended to correct for an acknowledged overstatement of plant assigned to the pole account.[18] In my opinion, notwithstanding Duke's $61.4-million downward adjustment to the GL 106 pole account in this case, for the reasons detailed below, I do not consider the GL 106 pole account balance to be a reliable or accurate data source for pole plant investment for purposes of the rate formula. Because the amount of pole plant booked to Account 364 is such an integral component of the pole rate formula, a pole rate calculation that relies on Duke's flawed GL 106 accounting is not a reliable calculation and does not meet the standards of accuracy and transparency that are the hallmark of the FCC rate formula methodology. In addition, as discussed further below, poles associated with investment amounts recorded in GL 106 would not likely be included in a pole count number generated by the GIS. Accordingly, there is an internal inconsistency in the rate formula if one includes dollar amounts of pole investment recorded in the GL 106 with pole counts generated by the GIS.

For purposes of my own pole rate calculations (provided in Attachment 4 to this testimony), I rely instead on the amount of pole plant booked to Duke's GL 101 (Plant in Service) account as of year-end 2007 ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***, adjusted upward to conform to the rate case test year ****This information is redacted. It refers to Depositions and Deposition Exhibits*

[17] See Staff Test Year Pole Attachment Rate Formula_ OH-As of 3-31-08 (excel spreadsheet).

[18] See Staff Report at 4. "During its investigation, the Staff discovered that the Applicant's additions to account 364 for the year 2007 appeared to be overstated. Applicant subsequently revised the appropriate plant accounts and associated depreciation reserve. The Staffs adjustments are shown on Schedules B-2.2 and B-3.1."

*submitted under seal on February 23, 2009****.[19] I made corresponding adjustments to both the accumulated depreciation and accumulated deferred tax amounts which are subtracted from gross pole plant in service to arrive at a net pole plant investment figure in order to ensure an "apples to apples" calculation.[20] While the GL 101 account may not have been subject to a comprehensive review as part of this rate case proceeding, it does not suffer from the documented inadequacies revealed in this proceeding relative to Duke's GL106 accounting for poles as described below.

Q. PLEASE EXPLAIN THE KEY DIFFERENCES BETWEEN THE GL 101 AND 106 ACCOUNTS, AND THE BASIS FOR YOUR DECISION TO RELY ON POLE PLANT BALANCES FROM ONLY THE 101 ACCOUNT FOR PURPOSES OF THE POLE RATE FORMULA.

A. By way of background, there are three distinct primary general ledger (GL) accounts where investment in electric plant for major utilities is recorded under the FERC Uniform System of Accounting.[21] When plant investments are first made in conjunction with a work order, they are placed in the GL 107 (Construction Work in Progress) account. As soon as the work order is completed and the plant is put into service, the investments are moved into the GL 106

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[19]The CPR Ledger Detailed Asset Report provided in Duke response to OCTA POD 01-004 Supplemental (OCTA Deposition Exhibit 14), pp. 54, 63, identifies a total GL 101 balance in Account 364 of ****This information is redacted. It refers to depositions and Deposition Exhibits submitted under seal on February 23, 2009****, which I grossed up by roughly 1% to arrive at a test year amount of ****This information is redacted. It refers to depositions and Deposition Exhibits submitted under seal on February 23, 2009****. The 1% adjustment factor I apply in my calculation is the same percentage increase Duke applied to dollars of gross pole plant to gross it up from year end 2007 to an amount that conforms to the test year ending March 31, 2008. (Excerpts of Duke's CPR Ledger Detailed Asset Report for Plant Account 364 provided in Attachment 11 to this testimony.)

[20]For accumulated depreciation, I applied the same percentage relationships reflected in Duke's adjustment to accumulated depreciation for poles corresponding to Duke's reductions in gross pole plant (resulting from the GL 106 revisions). The adjustment to accumulated deferred taxes occurred automatically within the formula calculation since that input is developed by a prorating method tied to the ratio of pole plant to total distribution plant.

(Completed Construction Not Classified) account. Finally, there is the GL 101 (Plant in Service) account, where investment amounts are recorded following their final classification or assignment to the detailed electric plant accounts (such as account 364 for poles) that comprise the GL 101 (Plant in Service) account. With respect to Account 106 specifically, FERC accounting rules prescribe as follows:

> ...this account shall include the total of the balances of work orders for electric plant which has been completed and placed in service but which work orders have not been classified for transfer to the detailed electric plant accounts. NOTE: For the purpose of reporting to the Commission the classification of electric plant in service by accounts is required, the utility shall also report the balance in this account tentatively classified as accurately as practicable according to prescribed account classifications. The purpose of this provision is to avoid any significant omissions in reported amounts of electric plant in service.

While the FERC rules dictate that the balances recorded in GL 106 should be as "accurate as practicable," they make clear that GL 106 entries are only "tentative" or temporary classifications to support the stated purpose of this account, i.e., to avoid any significant omission in reported amounts of electric plant in service." By its very definition and design, GL 106 is not intended to provide a permanent or final classification record of plant in service or to meet any particular standard of accuracy; rather that is the specific role of the GL 101 accounting, to ensure that the correct amounts are ultimately assigned to the detailed plant accounts.[22]

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[21] See Part 101, 18 CFR Ch 1, see also Deposition of James Dean, dated January 30, 2009, at 21, 39 (Att. 7).
[22] See Deposition of James Dean, dated January 30, 2009, at 49 (Att. 7).

Q. HOW ARE THE INHERENT DIFFERENCES IN GL 106 AND 101 ACCOUNTING REFLECTED IN DUKE'S ACCOUNTING CLASSIFICATIONS PROCESSES?

A. The classification process by which Duke allocates pole plant investment associated with individual work orders to GL 101 differs markedly from the process Duke uses to allocate pole plant investment to GL 106. In the case of GL 101, it is my understanding that the dollar of pole plant investment allocated to account 364 is derived using standard price factors for poles as determined in Duke's Power Plant System (PPS) specific to the types of poles installed in the particular work order, based on several key defining characteristics of the poles such as height and type.[23] More specifically, the applicable standard price factor from the PPS is multiplied by the quantity of poles associated with the particular work order as determined by a field inventory.[24] In this manner, the allocation of 364 pole plant into the GL 101 account is determined in a systematic fashion using a "unitization" process based on an inventory count of poles in the field and standardized price factors developed for specific classes of poles.

By contrast, as described in the deposition testimony of James Dean and as further discovered in OCTA's examination of individual work orders posted to the GL 106 account, the allocation of pole plant into the GL 106 account is a seemingly ad hoc, undocumented estimation process prone to misallocations, inaccuracies, arbitrariness, and suffering from an apparent lack of effective oversight and controls.

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[23] Deposition of James Dean, dated January 30, 2009, at 42-43 (Att. 7).

[24] Id at 42.

Q. ON WHAT DO YOU BASE THE CHARACTERIZATION OF DUKE'S GL 106 ACCOUNTING PROCESS AS AN UNDOCUMENTED ESTIMATION PROCESS SUBJECT TO LACK OF EFFECTIVE CONTROL AND OVERSIGHT?

A. As noted earlier, in late January of this year, Duke made a downward revision to the GL 106 balance for account 364 of $61.4million. Through a series of discovery responses and deposition questioning of Duke accounting witness, James Dean, concerning among other things, the individual work orders that Duke reviewed in connection with its revision to the GL 106 balance, some very questionable aspects of Duke's GL 106 estimation process have been revealed.

In the course of this proceeding, Duke has revised its pole plant investment figures that include GL 106 no less than four different times, providing evidence of an inexact and lax nature of Duke's GL 106 accounting process.[25] In discovery responses provided to OCTA in November 2008 presenting a summary of CPR (Continuing Property Record) data for account 364 that include both GL 101 and GL106, Duke identified a pole investment amount as of year-end 2007 of $262.6-million.[26] In a subsequent round of discovery responses to OCTA, Duke had revised that figure upward to $284.5-million.[27] In responses provided to Staff shortly thereafter, Duke revised its estimates of year-end 2007 pole plant amounts two more times. The first time Duke identified it was making a $65.6-million reduction to GL 106 pole plant, bringing its previously stated (combined GL 101 and GL 106) pole plant investment figure down to $218.9-million.[28]

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[25] See Deposition of James Dean, January 30, 2008, at 11-19 (Att. 7).

[26] See Duke Response to OCTA POD-01-004, OCTA Deposition Exhibit 4 (Att. 9).

[27] See Duke Response to OCTA-INT 03-022, OCTA Deposition Exhibit 21 (Att. 9).

[28] See Duke Response to PUCO Fiftieth Set Staff Data Requests, STAFF DR-50-001 (Att. 9).

However, Duke issued a supplemental response identifying a reduction of $61.4-million to GL 106 resulting in a stated amount of $223.1-million in combined GL 101 and GL 106 pole plant, and it is this "final" number that is incorporated in the Staff Report.[29] Summary CPR account 364 data provided by Duke for earlier years were also subject to change over the course of discovery.[30]

Duke's own awareness of the need to revise GL 106 amounts associated with pole plant was first revealed in the earlier deposition testimony of James Dean. Mr. Dean acknowledged Duke's discovery back in June or July of 2008, and also more recently in the course of his preparation for his deposition in this case, that certain projects had been entered into the GL 106 account with overestimated amounts for poles. Simply put by Mr. Dean, "the utility account estimated allocation had put too much to the pole account" vis-à-vis other distribution plant accounts."[31] Mr. Dean indicated Duke's intention to perform a review of estimated amounts assigned in GL 106 to poles vis-à-vis other distribution accounts. However, at that time (mid-December), Mr. Dean testified that Duke was still in the process of reviewing and finalizing the nature of the review process they were going to perform, and according to Mr. Dean, they had only initially focused on amounts assigned to poles in GL 106 in 2007.[32] In the course of his deposition, there were numerous instances pointed out, spanning back multiple years, where investment seemingly

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[29] See Id., STAFF DR 50-001 Supplemental (Att. 9).

[30] See data presented for years 1993 -1999 as identified in Duke Response to OCTA-Int-02-015, OCTA Deposition Exhibit 22, as compared to Duke Response to OCTA-INT 03-022, OCTA Deposition Exhibit 21 (Att. 9).

[31] See Deposition of James Dean, dated December 15, 2008, at 32-34 (Att. 8).

[32] See Id. at 91-92.

completely unrelated to poles (such as investment in conductors, capacitors, and street lights), had been assigned to the GL 106 to the pole account 364.[33]

Q. WOULD YOU EXPECT TO HAVE INVESTMENT AMOUNTS GOING BACK MULTIPLE YEARS SITTING IN THE GL 106 ACCOUNT?

A. Under normal expectations, and pursuant to FERC rules, work orders would be cleared from Account 107 to 106 as soon as practicable following completion of the job, and similarly the tentative or estimated distributions of plant to Account 106 would be permanently classified into Account 101 in a timely manner. The instructions on the FERC Form 1 pertaining to Electric Plant in Service Accounts make a specific allowance for "entries for reversals of tentative distributions of prior *year* reported."[34] In the case of Duke's GL 106, this appears to be far from the case. Duke's serious backlog problems apparently first arose in connection with the utility's conversion to the new PPS accounting system, which occurred year-end 1999.[35] According to Mr. Dean, prior to the conversion, it was Duke's normal business practice to classify plant from GL 106 into Account 101 with three to six months of the plant being placed in service, or at least within the year.[36] When asked in deposition about certain projects put in service as far back as 2000 that had not yet been classified, Mr Dean explained that "******This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009******"[37]

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[33]See for example, Id. at 66-70, 79, 92-93.

[34] FERC Form 1, page 204, Electric Plant in Service (Account 101,102,103, and 106).

[35] See Duke Response to OCTA-INT-02-015, OCTA Deposition Exhibit 22 (Att. 9).

[36] See Deposition of James Dean, January 30, 2009, at 51-52 (Att. 7).

[37] Id.at 52.

Mr. Dean's testimony concerning the backlog in GL 106 is corroborated in CPR summary data provided in discovery which showed that, as of year-end 1999, just prior to Duke's conversion to PPS, the balance in GL 106 for pole plant was only about ***This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***, associated primarily with projects completed within that calendar year.[38] By contrast, as of year-end 2007, prior to the revisions made by Duke in the course of this rate proceeding, the balance in GL 106 for pole plant had mushroomed to approximately ***This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***[39] ***This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***[40] Even with Duke's downward revision of $61.4-million, Duke's GL 106 balance in Account 364 remains over ***This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***[41] ***This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***

[38] Id. at 112-113.

[39] The ***This information is redacted. It refers to depositions and Deposition Exhibits submitted under seal on February 23, 2009*** figure is derived by subtracting ***This information is redacted. It refers to depositions and Deposition Exhibits submitted under seal on February 23, 2009*** [the balance in the GL 101 for Account 364] from $284.5 million [the original combined GL 101 and 106 account balance for Account 364 of as year-end 2007].

[40] See Deposition of James Dean, dated January 30, 2009, at 52-53 (Att 7), see also CPR Ledger Detailed Asset Report for GL Account 106, OCTA Deposition Exhibit 14, pp. 64-144 (Att.11).

[41] This figure is calculated by subtracting the $61.4-million in reductions to the GL 106 for poles from the unadjusted balance for GL 106 of ***This information is redacted. It refers to depositions and Deposition Exhibits submitted under seal on February 23, 2009***

Q. HAS DUKE PROVIDED AN EXPLANATION OF WHY PLANT INVESTMENT HAS BEEN OVER ALLOCATED TO POLES IN THE GL 106 ESTIMATION PROCESS?

A. In response to a Staff interrogatory, Duke attributes its errors in distributing dollars to the proper accounts to the following two events: (1) Duke's implementation of a new accounting system in April 2005, at which time a number of blanket work orders (i.e., orders not associated with a specific project work orders)[42] that should have been allocated to several different distribution accounts were mistakenly allocated solely to the pole account 364; and (2) in December 2006, several work orders created for the purposes of "establishing a vintage year for additions" were erroneously coded in account 107 (Construction Work in Progress) rather than account 106, and the correction of that error in January 2007 had the effect of understating 2006 additions and overstating 2007.[43] Additionally, Duke's response mentions corrections that "go back to 2001," but claims the "2001-2004 corrections are minor."

Q. DOES DUKE'S EXPLANATION ADEQUATELY EXPLAIN THE OBSERVED ERRORS IN GL 106 WITH RESPECT TO POLE PLANT ACCOUNT 364?

A. No, it does not. Duke fails to explain how the types of errors Duke describes in the above cited response took place in the first instance and why they were not caught earlier. Duke also fails to explain why the types of errors Duke describes would be limited to the two specific dates (i.e., April 2005 and December 2006) identified in this response. There are examples of potential misallocations to pole account 364 throughout the entire GL 106 account and over the

[42] See Deposition of James Dean, dated January 30, 2008, at 71 (Att. 7).

[43] See Duke Response to PUCO Fiftieth Set of Staff Data Requests, STAFF DR-50-001 Supplemental (Att. 9).

entire time period of identified work orders, as far back as ***This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009***[44] As discussed further below, the explanation for observed errors in the GL 106 account appear more related to systemic problems in Duke's 106 estimation process consistent with a lack of proper oversight and control in connection with and continuing in the years following Duke's switch over to the new accounting system at the end of 1999. Plant account assignments have been allowed to languish in a roughly-estimated state in the 106 account for years, rather than be subject to the more systematic unitization and costing process that occurs during the final classification into GL 101. Duke's explanations offered in this case do not substantively explain why this apparent breakdown in process occurred.

With respect to Duke's claims of only "minor" corrections prior to 2005, while it may be true that Duke has *made* only relatively minor corrections to work orders pre-dating the 2005 accounting conversion process, Duke does not provide any information that adequately explains or justifies that particular outcome. As a general proposition, Duke has provided no real documentation to support either its original or revised plant allocation estimates, nor does it identify any standards of review established for the internal group charged with the task of reviewing the plant allocation estimates in connection with this rate case.[45]

[44] See, for example, Deposition of James Dean, December 15, 2008 at 77, 92-93 (Att. 8), also CPR Ledger Detailed Asset Report, OCTA Deposition Exh. 14, pp.64-144 (Att. 11).

[45] See Duke Response to OCTA-INT-03-023(Att. 9), also Deposition of James Dean, January 30, 2009, at 55-58 (Att. 7).

****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[46] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[47] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****

Q. DOESN'T THE FACT THAT DUKE HAS MADE A SIGNIFICANT REDUCTION IN THE GL 106 ACCOUNT TO CORRECT FOR THE OVER ALLOCATION OF PLANT TO ACCOUNT 364 REMEDY THE CONCERNS WITH RELYING ON GL 106 IN THE POLE RATE FORMULA CALCULATION?

A. No, it does not. While a number of corrections were made by Duke pursuant to this rate case investigation (resulting in the reduction of the pole plant investment amount by $61.4-million), the corrections made by Duke are not sufficiently supported or comprehensive so as to satisfy the standard of transparency and accuracy inherent in the FCC formula methodology approach. Plus, the scant documentation that Duke provided in discovery and in Mr. Dean's deposition testimony regarding the assignment of costs to the pole plant account raises even more questions about the seemingly arbitrary and undocumented nature of Duke's GL 106 estimating process, both as it pertains to the original assignment to account 364 and any revised assignment made in connection with the rate case review. In my opinion, given the questions that have been raised concerning the accuracy and reliability of the amounts of pole plant recorded in GL 106 relative to the classified pole plant amounts recorded in GL 101, it makes no sense to rely on the former,

[46] See Deposition of James Dean, January 30, 2009, at70. (Att. 7)

[47] See, for example, CPR Ledger Detailed Asset Report, OCTA Deposition Exh. 14, at pp.108, 115-122 (Att. 11).

even as revised. Moreover, and independent of the questions and concerns regarding the accuracy and reliability of GL106 plant assignments, it would be problematic to include pole plant recorded in GL 106 because of the mismatch with the pole count as described further below.

Q. PLEASE DESCRIBE THE QUESTIONS RAISED IN CONNECTION WITH DUKE'S RECENT REVISIONS TO GL 106.

A. ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[48] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[49] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[50]

Second, and perhaps more importantly, Duke has provided no documentation or detailed justification of the adjustments that were made - or in many cases, not made - to projects that were subject to review. ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[51]

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[48] Deposition of James Dean, dated January 30, 2009 at 91 (Att. 7).

[49] See, for example, CPR Ledger Detailed Asset Report, OCTA Deposition Exhibit 14, p.99, 121 (Att. 11).

[50] See Deposition of James Dean, dated January 30, 2009 at 77 (Att. 7).

[51] See Deposition of James Dean, January 30, 2009, at 61-62, 65, 69-72, 78 (Att. 7). See also OCTA-INT-03-23, OCTA Deposition Exhibit 21 (Att. 9) showing a list of work orders reviewed. Those without any numbers did not have any adjustment made to their original allocation estimates.

Q. CAN YOU EXPLAIN FURTHER ABOUT THE REVISED PLANT ASSIGNMENTS MADE PURSUANT TO DUKE'S REVIEW PROCESS AND WHY, IN THE ABSENCE OF DOCUMENTATION, THEY APPEAR TO BE SEEMINGLY ARBITRARY?

A. In the absence of documentation, it is not possible to independently validate the revisions Duke made to correct for original errors in plant assignments to GL 106, to understand how those revisions compare to the original plant assignment estimates, or to assess the reasonableness of the instances where no revisions were made. Once again, as with the pole count data Staff relies on, the Company witness responsible for the revised pole plant investment figure appears to have no supporting back up information concerning any adjustments that were made in the review process. ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[52] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009**** Given the number of revisions that have been made to GL 106 within the past couple of months, the lack of documentation regarding either the original or revised allocation estimates gives little basis for confidence in the accuracy of these numbers.

****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[53] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[54]

[52] See Deposition of James Dean, January 30, 2009, at 98-100 (Att. 7).

[53] See Id. at 101-102. Mr. Dean could not recall what the sets of percentage allocations he was provided were.

[54] Id.

****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[55] ****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****[56]****This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009****

Q. ASIDE FROM THE UNRELIABLE AND INACCURATE NATURE OF DUKE'S GL 106 ACCOUNTING FOR POLES, IS THERE ANOTHER REASON WHY IT WOULD BE PROBLEMATIC TO INCLUDE GL 106 POLE INVESTMENT AMOUNTS IN THE POLE RATE FORMULA?

A. Yes, there is another very important reason why GL 106 pole investment should not be included in the pole investment amounts used to calculate the pole rate formula. Including pole investment dollars recorded in GL 106 would result in an apparent mismatch between the pole investment number and the pole count number used in the rate formula calculation. The problem is similar to that previously described in connection with using a rate year investment figure (i.e., as of March 31, 2008) with a pole count as of year-end 2007, but to an even larger degree given the magnitude of the GL 106 pole balances Duke has allowed to accumulate. The mismatch occurs because the net bare pole cost component of the rate formula is derived by dividing booked pole investment dollars by a number of poles identified by the utility. Including investment associated with multiple prior years of "non-unitized" investment (such as included

[55] Id. at 59-62, 66-70, see also referenced works orders in OCTA Deposition Exhibits 25-27. (Work orders in OCTA Deposition Exhibits cited in this testimony provided in Attachment 12 to this testimony).

[56] ****This information is redacted. It refers to depositions and Deposition Exhibits submitted under seal on February 23, 2009****

in Duke's GL 106 accounting for poles) in the numerator, without including the additional number of poles corresponding to that pole plant in the denominator, if uncorrected, will result in an over-statement of the net bare pole cost and the pole rate derived on the basis of that cost. This is precisely the outcome here because of the time lags inherent in Duke's pole classification and inventorying processes.

Mr. Dean explains in his deposition testimony that the point at which poles are inventoried and entered into the Small World post, is not when they are put in service and recorded in GL 106, but later at such time the project is classified (also referred to as "unitized") from GL 106 into the GL 101.[57] Mr. Dean further testifies that while at best, the inventorying of poles would take place several months following the actual placement of the poles in the field, in recent years, Duke apparently has fallen years behind.[58] Thus, as described, there exists a potentially very substantial lag between the time Duke records pole plant investment in the GL 106 account, and the time at which the number of poles associated with that plant is inventoried and appears in the Small World system and hence incorporated in the pole count figure generated by Small World and used in the pole rate formula. Duke's acknowledged backlog in unitizing and inventorying pole plant makes the impact of the mismatch that would result from including GL 106 "non-unitized" pole plant amounts in the pole formula all the more significant a problem here.

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[57]See Deposition of James Dean, dated January 30, 2009, at 25, where he explains that it is at the time of unitization that "[t]hey will place the new construction onto that system identifying what the property units are pertinent to that project." (Att. 7) See also Deposition of James Dean, dated December 15, 2008, at 33: "Then we unitize, close the project, we move it to the 101. That's when we do a field inventory of all the poles" (Att. 8).

[58] Deposition of James Dean, dated December 15, 2008 at 41-42 (Att. 8), see also Deposition of James Dean, January 30, 2009 at 51-53 (Att.7).

Q.AFTER THE NEEDED CORRECTIONS TO DATA INPUTS ARE MADE, WHAT IS THE RESULTING MAXIMUM POLE ATTACHMENT RENTAL RATE CALCULATED USING THE REGULATED RATE FORMULA?

A. After making the needed corrections to data inputs as described above (i.e., gross up to pole count figure to conform to the rate year, and removal of the unreliable GL 106 pole investment amounts), I calculate a maximum pole rental rate of $6.05 per pole per year for one foot of space. My rate calculations are presented in Attachment 4 to this testimony.

Q. HOW DOES THE RESULT OF YOUR FORMULA RATE CALCULATION COMPARE TO STAFF'S PROPOSED RENTAL RATE FOR POLES?

A. Staff calculates a maximum pole attachment rate of $9.25 using the rate formula. However, Staff actually proposes a maximum pole rate of $6.40, which represents a 50% increase over the existing $4.25 pole rental rate. Staff's proposed rate of $6.40 is based on its finding that "a 118% increase [from $4.25 to $9.25] is too significant to impose in a single increase," and that even at the lower $6.40, the new rate "would be the highest tariffed electric company rate in the State."[59] Interestingly, my own rate calculation of $6.05 (which I have derived using the rate formula but with corrected data inputs) is in the same range as Staff's proposed rate (about 5.5% lower). My calculation confirms the reasonableness of Staff's moderated approach in setting a new pole attachment rental rate, but shows that even Staff's moderated proposed rate increase is higher than justified based on fully allocated cost.

[59] Staff Report at 24.

Benchmark data from peer utilities show pole rates well below both Staff's proposed $6.40 rate and my corrected $6.05 formula rate.

Q. HOW DO THE RESULTS OF YOUR FORMULA RATE CALCULATION COMPARE WITH FORMULA RATE RESULTS AND/OR RATES IN EFECT FOR OTHER DUKE ENERGY UTILITIES AND DUKE'S PEER UTILITIES IN OHIO?

A. As an independent check on the reasonableness of my rate formula result, I have compared my result for Duke Energy – Ohio with formula rate results and/or rates in effect for other Duke Energy utilities as well as other peer utilities in Ohio. The benchmark analysis I have performed shows that my formula rate calculation, and even more so Staff's, produces a rate result that is relatively high as compared to a peer group of comparable electric utilities.

Table 1

Benchmark Comparison of Pole Rates Charged by Peer Duke Electric and Ohio Utilities

Peer Group	Existing Pole Rate	Staff Proposed Rate	% Staff Rate Exceeds Existing Rate	Corrected Pole Formula Rate	% Corrected Pole Rate Exceeds Existing Rate
DE Utilities					
DE -Ohio	$4.25	$6.40	51%	$6.05	42%
DE -Indiana	$4.91[a]		30%		23%
DE -Kentucky	$4.30[b]		49%		41%
DE-No Carolina	$5.32[c]		20%		14%
CEI	$4.29		49%		41%
Ohio Utilities					
Columbus So P	$2.98		115%		103%
Dayton P &L	$3.50		83%		73%
OH Edison	$4.69		36%		29%
OH Power Co	$3.90		64%		55%
Toledo Edison	$3.39		89%		78%
Avg Telco	$2.59		149%		135%

a. Deposition of Ulrich Angleton, December 15, 2008, at 18 (Att.13).
b. Id. at 17, Rate is average of two and three party rates.
c. Derived from telecom rate data, rate applies for 2006-2007 and 1998-1999.

As shown in Table 1 on the preceding page, the $6.05 maximum pole rate figure I have calculated for Duke Energy-Ohio using corrected data inputs is some 14% to 41% higher than benchmark data available for sister Duke utilities. Staff's proposed rate of $6.40 is as much as 20% to 49% higher than the rate for comparable Duke utilities. Similarly, relative to its peer utilities in Ohio, both my corrected formula rate and Staff's proposed rate are higher than any other pole rate currently in effect for other electric utilities, ranging from as much as 29% to over 100% more. Compared with the average pole rate charged by telephone companies, the formula

rates for Duke Energy- Ohio before the PUCO in this case are between two and two and one-half times greater.

The 239% increase in the pole attachment rate (from $4.25 to $14.42) that Duke originally proposed using the FCC formula for year-end 2007, and the 118% increase (from $4.25 to $9.25) that Staff calculated using the rate formula for the test year period, both present an immediate red flag when compared against the relevant benchmark data. Indeed, the observation of Duke's highly anomalous rate formula results relative to Duke's peer utilities raised serious questions concerning Duke's data inputs to the formula in the first instance. In this context, it is not surprising that the questioning of Duke witnesses concerning the utility's pole plant accounting ultimately led to the revelation of systemic problems in Duke's GL106 for account 364 that produced overstated pole plant investment amounts and correspondingly overstated rate formula results for Duke and Staff, respectively.

The use of benchmark data as an independent means to test the reasonableness of a result is a common practice, especially when there are issues or limitations that affect the quality of the data available for the analysis. In addition, because of the intrinsic nature of the underlying pole plant (i.e., extremely long-lived asset relatively immune to technological innovation), all things being equal, I would not expect to see either a significant variation among sister utilities in similar regions of the country or a substantial increase in the historical per unit cost over time for poles. The rate result I calculate using corrected data inputs is more reasonable by comparison.

Q. IS THERE ANY OTHER POINT OF COMPARISON AVAILABLE FOR YOUR RATE FORMULA RESULT?

A. Yes. Another point of comparison is the effective pole rate Duke charges telephone companies within its service area. According to Duke witness Ulrich Angleton, the rate that Duke charges Embarq for three feet of space on the pole is $16,[60] suggesting an effective rate per foot of pole space of $5.33 □ right in line with the other benchmark data. Moreover there are other important differences in the manner electric utilities typically charge telephone companies vis-à-vis cable operators, that when taken into account, suggest an even more favorable effective per pole rate for the former. In particular, telephone companies typically pay rental fees for only the number of poles that exceeds a pre-established ownership percentage, and are not subject to the upfront and often substantial make-ready fees charged cable operators for work identified by the utility as needed to accommodate their attachment and that apply over and beyond the annual formula rental rate.

There are important economic and policy reasons that support a pole attachment rate closer, if not equal to, Duke's existing cable rate of $4.25.

Q.MS. KRAVTIN, ARE THERE OTHER REASONS FOR KEEPING THE POLE ATTACHMENT RENTAL RATE BELOW THE $6.40 RATE PROPOSED BY STAFF, AND EVEN THE $6.05 RATE YOU HAVE CALCULATED?

A. Yes, there are several important economic and policy reasons that support a pole attachment rate below $6.00 and closer, if not equal to, the existing rate of $4.25 currently being charged by Duke to cable operators in Ohio.

[60] See Deposition of Ulrich Angleton, dated December 15, 2008 at 38. (Excerpts of the Ulrich Angleton's deposition, dated December 15, 2008, provided in Attachment 13 to this testimony.)

Q. PLEASE EXPLAIN.

A. Because the FCC formula rate is a fully allocated cost (including a reasonable return on the utility's investment), by definition it exceeds the marginal cost of attachment.[61] Marginal costs in this context are defined as any additional costs incurred by the utility in order to accommodate or host a third-party attachment that would not exist "but for" the presence of that third-party attachment. These types of costs are precisely those that the make-ready charges paid by cable operators on an up-front basis for the non-recurring or out-of-pocket costs of hosting an attachment are designed to cover. Annual rental payments based on the regulated rate formula provide payments to the pole owner *over and above* those make-ready charges. Thus, taken together, this means that Duke has the opportunity to recover much more than the marginal cost of attachment from a cable operator for use of otherwise available space on utility poles.[62] Plus, the utility enjoys the benefit of any and all improvements to its pole assets (including greater available pole capacity to use itself or to rent to others) fully funded by the make-ready charges paid by the cable operator.

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[61] By design, the carrying charge factor incorporated in both the cable and telecom formulas "reflects those costs incurred by the utility in owning and maintaining pole attachment infrastructure regardless of the presence of attachments," the precise opposite from what marginal costs would be intended to reflect. *Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, FCC 01-170, 16 FCC Rcd 12103, 12156 ¶ 110 (2001) ("*Reconsideration Order*"), citing *Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, FCC 00-116, 15 FCC Rcd 6453, 6477-78 ¶ 44 (2000) (emphasis added). See also, Alabama Power Co. v. FCC, 311 F.3d 1357, 1363,1368-1369 (11th Cir. 2002).

[62] "The known fact is that the Cable Rate requires the attaching cable company to pay for any "make-ready" costs and all other marginal costs (such as maintenance costs and the opportunity cost of capital devoted to make-ready and maintenance costs), in addition to some portion of the fully embedded cost . . . [so that] much more than marginal cost is paid under the Cable Rate . . . ." Alabama Power Co. v. FCC, 311 F.3d at 1368-69.

From an economics perspective, as long as the price for pole attachments exceeds the marginal cost of attachment, the utility pole owner and its ratepayers are definitively better off financially after a cable attachment than before, and any potential for cross-subsidy of the cable operator by the utility or its ratepayers is avoided. Thus, even at the current pole rental rate of $4.25, and especially taking into account make ready charges, Duke stands to recover *much more* than its marginal cost of attachment.[63] Conservative estimates of the marginal cost of attachment that I have seen generally fall in the $1.00 to $1.50 range per foot of space. Given Duke is recovering much more than the marginal cost of attachment for use of otherwise available space on a utility pole, it is a "win-win" for both the utility and the cable operator. It is also a "win" for the society as a whole.

From an overall societal standpoint, the closer the prices charged by the utility for cable's shared use of its pole facilities are to the utility's marginal costs of attachment, the more efficient the outcome in terms of maximizing the productive use of societal resources. This is the result of several related economic phenomena. Pricing approximating marginal cost creates conditions more likely to simulate and therefore stimulate competition market performance in the final service market (i.e., broadband), with its wide-ranging benefits to consumers in the form of lower prices, greater choices among new and innovative services, and enhanced productivity and economic development opportunities for the economy in the state of Ohio. Minimizing the

[63] "Significantly, when an attacher pays the cost of getting on a pole, Gulf Power stands to earn more." See Federal Communications Commission, *In the Matter of Florida Cable Telecommunications Association, Inc., Comcast Cablevision of Panama City, Inc.; Mediacom Southeast, L.L.C.; and Cox Communications Gulf, L.L.C.; Complainants v. Gulf Power Company, Respondent ("FCTA")*, Initial Decision of Administrative Law Judge Richard Sippel, EB Docket 04-381, rel. January 31, 2007, ¶23. See also Id. at ¶19: "And Gulf Power is never out of pocket because when a cable operator needs make-ready work to accommodate an attachment, the attacher pays the costs."

possibility of lost value to consumers (most of whom are also electricity subscribers) and society in general from allowing utilities to charge too high a price for pole attachments relative to the marginal cost of the attachment is all the more compelling given the relative ease with which cable and other third party attachers have historically been accommodated through a utility's normal and customary make-ready arrangements.

Based on application of the FCC conduit rate formula, Duke should be allowed to charge cable operators a conduit rental rate of no more than $0.55 per foot of conduit space.

Q. UNTIL NOW, YOUR TESTIMONY HAS FOCUSED EXCLUSIVELY ON THE RATE DUKE CHARGES CABLE OPERATORS FOR THEIR OCCUPANCY OF UTILITY POLE SPACE. IS THERE ALSO A NEED TO ESTABLISH A REGULATED RATE FOR CABLE'S OCCUPANCY OF DUKE'S UNDERGROUND CONDUIT?

A. Yes, there is. Like poles, conduits are "essential facilities" capable of serving as bottlenecks to facilities-based competition for which cable operators have not had similar opportunities to construct their own structures or to join together to share a common facility similar to incumbent telephone and electric utilities in the past. Where cable operators occupy space in Duke's conduits, they typically have no practical or cost-effective alternative to the use of those facilities.

As is the case with poles, there are zoning, environmental, municipal ordinance, financial, and other constraints that make it impractical for cable and other third parties to construct new conduit systems on a scale or scope anything close to that owned and controlled by the

incumbent utility.[64] In any given area, there is typically one provider of conduit space with surplus space in those conduits, as the cost of constructing a stand-alone conduit system throughout the entire service area would be prohibitively expensive. There is no other regulated or unregulated entity that lease conduit in sufficient quantity and/or ubiquity so as to provide the cable operator with a viable market-based alternative to the leasing of conduit from the existing utility. Even as regards a more limited overbuild, third parties tend to face numerous impediments, including resistance from local governmental authorities in authorizing unnecessary and/or disruptive street cuts. Even if local permits would be granted, the social, aesthetic, and other costs of constructing duplicative conduit have long served to effectively require cable operators and CLECs to follow the paths of existing utilities. This reality has been and continues to be a major factor in rulings by the FCC, state and local regulatory bodies, and the courts, as to the continued appropriateness of applying a regulatory rate formula based on embedded costs to the third-party rental of utility pole and conduit space alike.

Q. PLEASE DESCRIBE THE FCC FORMULA FOR CALCULATING THE MAXIMUM RENTAL RATE FOR CONDUIT SPACE AS APPLIED TO ELECRIC UTILITIES?

A. The FCC formula used to derive the maximum rate for occupancy of utility conduit space is directly analogous to the formula for poles. Similar to poles, there are three major components of the FCC formula applied to conduit. These are (1) the net unit (linear) cost, (2) the percent of capacity occupied by an attacher, and (3) the carrying charge factor. As in the case of the pole rate formula, the maximum rate under the FCC formula is derived by multiplying the product of the first two components of the formula (the net linear cost of conduit times the percentage of

[64] *See, e.g., Alabama Cable Television Ass'n v. Alabama Power Co.*, 16 FCC Rcd 12209 (2001), at ¶57.

conduit capacity) by a carrying charge factor that translates investment costs into annual costs, as shown in the formula below.

Maximum Conduit Rate = [Net Linear Cost of a Conduit] x [Carrying Charge Rate] x [Percentage of Conduit Capacity]

Attachment 3 to my testimony describes each of the three major components of the FCC conduit attachment formula in detail.

Q.HAVE YOU PERFORMED A CALCULATION OF THE MAXIMUM CONDUIT RENTAL RATE THAT DUKE IS PERMITTED TO CHARGE CABLE OPERATORS USING THE FCC FORMULA?

A. Yes, I have. Those calculations are presented in Attachment 5 to this testimony. As shown in those calculations, the fully allocated cost of conduit for the test year ending March 31, 2008, derived on the basis of the FCC's one-half duct presumption (i.e., a capacity percentage of 50%), and using specific rate case data when available, is **$0.55** per foot of conduit occupied.

Q. DO YOU HAVE REASON TO BELIEVE A RATE BASED ON THE HALF-DUCT CONVENTION MAY OVERSTATE THE COST PROPERLY ATTRIBUTABLE TO A CABLE COMPANY'S OCCUPANCY OF CONDUIT SPACE?

A. Yes, I do. Use of the FCC's half-duct convention is equivalent to an assumption of *two* inner ducts per conduit. In my calculation of the conduit rate formula, I have relied on the FCC's half-duct convention because there is no information available in the record regarding Duke's practices with respect to inner duct installations. However, it is my understanding that installation of up to *six* inner ducts is not unusual. The more inner ducts present in a conduit, the

more units of capacity over which to spread the costs of the conduit. For example, with an average of three inner ducts per conduit, Duke's maximum rental rate would be **$0.36** per foot of conduit space as compared with $0.55 per foot of conduit space calculated using the half-duct convention.

In its 2001 pole attachment decision, while retaining the half-duct convention,[65] the FCC affirmed the principle underlying its formula that attachers should be assessed only for that amount of conduit space actually occupied. The FCC held that when there is the evidence to demonstrate an even smaller portion of the duct is occupied through the use of inner duct, that percentage should be used in the formula in place of the FCC presumption which assumes a lessee occupies one-half of the conduit. Accordingly, to the extent data is available to the PUCO that would support use of a higher number of inner ducts for Duke, that number should be used in the conduit rate formula in lieu of the half-duct convention.

Q. HAS STAFF PRESENTED CONDUIT RENTAL RATE CALCULATIONS IN THIS CASE?

A. No, it has not.

[65] See Consolidated Partial Order on Reconsideration, FCC CS Docket 97-98, CS Docket No. 97-151, FCC 01-170, Rel. May 25, 2001, ¶95-98.

TERMS AND CONDITIONS

Duke's proposed Pole Attachment/Conduit Occupancy Tariff contains a number of provisions that work to undermine the effectiveness of pole attachment regulation in stemming monopoly abuses, some, but not all of which are addressed in Staff's Report.

Q. IN ADDITION TO EXCESSIVE ATTACHMENT RATES, ARE THERE OTHER ISSUES RELATING TO ACCESS TO DUKE'S ESSENTIAL POLE AND CONDUIT FACILITIES THAT ARE ALSO IMPORTANT IN PREVENTING POTENTIAL MONOPOLY ABUSES BY THE UTILITY?

A. Yes, there are. The very reason why the rates, terms and conditions of pole and conduit attachments came to be regulated in the first instance is due to the bottleneck monopoly status of poles and conduit and the fact that these essential facilities historically have been used for anti-competitive ends. The fundamental premise underlying the FCC's development and use of the rate formula upon which the PUCO rate formula is based is that unless the utility is subject to regulatory pricing standards based on well-established economic cost allocation principles, the pole-owning utility will be able to exploit its monopoly power and charge excessively high, economically inefficient rates. The same holds true with respect to the multitude of non-price factors under the utility's control dealing with third-party access to the essential pole or conduit facilities, i.e., the numerous terms and conditions, established by the utility as part of the pole attachment rental process.

The economic literature is replete with examples of non-price strategies used to deter entry and restrain rivals in ways directly analogous to monopoly pricing by raising the effective cost of entry. These include strategies of inaction, delay, denials and penalties, etc. all of which affect the long-run market dynamic in the final service market (for poles and conduit, this would

include multichannel video, broadband, and voice) and create a cost disadvantage for the entrant vis-à-vis the incumbent and/or other competitors, for whom those non-price factors do not apply or are applied by the utility in a more favorable manner.

It is important to note that neither economic nor regulatory policy defines barriers to entry as an absolute condition. The economic literature defines barriers to entry in terms of the "condition of entry" and is basically equivalent to the "'state of potential competition' from possible new sellers."[66] In his seminal work on barriers to entry, economist Joe Bain identifies several types or sources of entry barriers, including (1) absolute cost advantages of the established firm; (2) product differentiation advantages of the established firm, and (3) advantages enjoyed by the established firm relating to economies of scale. While the earlier economic literature on barriers to entry tended to focus on a short-run, relatively simplistic view of the entry condition, subsequent work has examined entry conditions over a longer time horizon with particular focus on dynamic entry-deterring behavior involving more sophisticated price and non-price strategies. The regulatory literature, most recently in the context of implementation of the Telecommunications Act of 1996, and its prevailing standard of competitive neutrality, defines an entry barrier as any regulation or policy that "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[67]

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[66] Joe S. Bain, *Barriers to New Competition,* Cambridge, Ma.: Harvard University Press,1965 (Bain), p.3.

[67] See FCC First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, FCC 96-325 ("FCC Local Competition Order,"), released August 8, 1996, at ¶308-310, also FCC Memorandum Opinion and Order, FCC 97-25, re: California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934, CCB Pol 96-26, released July 17, 1997, at ¶¶31, 42.

In the new competitive environment, where cable operators and new local telecommunications carriers are competing directly against not only incumbent telephone companies, but electric utilities, their affiliates, and/or other companies in which the utility has an interest, the incentives for monopoly abuse and the erection of barriers to competition have become even greater. So too, the pro-competitive benefits of effective regulation in preventing both price and non--price barriers to entry, including potentially onerous terms and conditions associated with access to pole and conduit facilities, have become all the more important in the post-1996 Act period.

By virtue of the utility's ownership and control of existing pole and conduit networks, cable companies and other third-party licensees negotiating access to these essential facilities do not enjoy even close to an equal bargaining position with regard to the setting of rates or the terms and conditions of access. The existence of an equal bargaining position between the utility and third-party licensees over rents, and other terms and conditions of access, or alternatively, a "free market" for poles, would require the existence of an established, active market for pole and conduit space in which cable and other third-party attachers have realistic choices with regard to renting and/or providing their own pole or conduit space. Only under such conditions (non-existing in the real world), where there are viable competitive alternatives for pole and conduit space available to third-party attachers, would utilities be unable to charge exorbitantly high prices relative to cost or to impose potentially onerous terms and conditions relative to access to these facilities.

In the absence of such free market conditions and equal bargaining positions of third-party attachers vis-a-vis the utility owners, effective regulatory intervention must be relied upon to

provide the countervailing balance. Without effective regulatory intervention, third-party attachers, on their own, would have little recourse but to accept the "take it or leave it" conditions for pole attachment offered by the utilities. Effective regulatory intervention is needed to help ensure an outcome that effectively and efficiently balances the interests of the utility and the third-party attacher, and at the same time promotes the public policy goals of a competitive telecommunications market and the widespread deployment of advanced information-age services and technology.

In this context, as described further below, many of the provisions included in Duke's proposed pole attachment/conduit occupancy tariff would enable the utility to further exploit its monopoly ownership of the pole network and create barriers to entry, contrary to effective pole attachment regulation and at the expense of broadband and other advanced services deployment.

There are several interrelated economic and public policy criteria underlying a set of core principles of effective pole attachment regulation for the PUCO to apply in evaluating the appropriateness of individual tariff provisions.

Q. WHAT STANDARDS SHOULD THE PUCO APPLY IN EVALUATING THE TERMS AND CONDITIONS ASSOCIATED WITH ACCESS TO DUKE'S POLE AND CONDUIT FACILITIES IN ORDER TO EFFECTIVELY REGULATE AGAINST POTENTIAL MONOPOLY ABUSES?

A. There are several important and interrelated economic and public policy criteria for the PUCO to apply in evaluating the appropriateness of the terms and conditions under which Duke proposes to provide cable operators and other third-party attachers access under its occupancy

tariff for poles and conduit. Key among the core principles underlying effective regulation of essential pole and conduit facilities are the following:

- *Competitive neutrality:* Pursuant to the concept of competitive neutrality described above, the PUCO should reject any term or condition that would "materially inhibit or limit the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." This would include any provision that is applied in a discriminatory manner and/or has the effect of relatively disadvantaging a cable attacher relative to any other attacher including the incumbent telephone company, the utility pole owner or an affiliate, and/or any company in which the utility has an interest.

- *Effectively competitive or free market:* A free market, generally synonymous with the economic ideal of a competitive market, is generally defined as one in which there are numerous buyers and sellers such that neither buyer nor seller can influence the price or other terms of sale, and neither party is under any compulsion to buy or sell. Pursuant to the free market standard, the PUCO should reject any term or condition that would not reflect an outcome consistent with that which would result from negotiations between a cable operator and the utility if the two parties had equal, or close to equal, bargaining power.

- *Cost causation:* Under the economic principle of cost causation, costs are properly attributed to the entity causally responsible, i.e., the entity but for whose existence (or action) a cost would not have been incurred. In keeping with the principle of cost causation, the PUCO should reject any term or condition that would result in a third-party cable attacher being

attributed or charged a fee unrelated to, or materially more than, the costs directly attributable to its own actions or existence and/or that would result in a double-recovery of costs or a recovery of costs for which there is no lost economic opportunity for the utility.

- *Public Interest:* This fourth criterion recognizes that in addition to the respective benefits to the parties directly involved (i.e., the private benefits of the transaction to the utility and third-party attachers, respectively), there are important public benefits that accrue to society at large from third-party access to utility pole and conduit facilities. From a "societal welfare" point of view, there is economic value associated with the efficient use of resources, i.e., the use of resources resulting in the lowest overall cost to society and the best possible utilization of those resources as compared with alternative uses. Application of a public interest standard dictates that the appropriate economics and public policy calculus considers the cost and benefit of a particular term or condition not in terms of the narrowly-defined pecuniary interests of the pole owning utility but from the larger social welfare perspective. By that, I am referring to the impact on consumers overall, and especially consumers of broadband and other advanced services (which include the utility's own electric ratepayers) for which access to utility poles and conduit are key inputs.

Numerous provisions in Duke's proposed tariff are shown to violate core principles of effective pole attachment regulation.

Q. PLEASE IDENTIFY THOSE TERMS AND CONDITIONS IN DUKE'S PROPOSED POLE/CONDUIT OCCUPANCY TARIFF WHICH ARE INCONSISTENT WITH THE CORE PRINCIPLES FOR EFFECTIVE REGULATION YOU IDENTIFY ABOVE.

A. There are several terms and conditions in Duke's proposed tariff that violate the core principles identified above, some of which are addressed in Staff's Report, but many of which are not. These items are addressed in turn in order of the section of Duke's proposed tariff in which they appear.

Applicability

In this section of Duke's proposed tariff, Duke specifically limits the applicability of the tariff to a "wireline attachment," narrowly defined as "the attachment of wire or cable and associated facilities or apparatus within one (1) foot of vertical space." The second paragraph of this section specifically excludes from this tariff "wireless and WI-FI equipment /attachments and overlashing of existing attachments" and further puts "at the sole discretion of the Company" decisions as to the "size, type and placements of any attachment or occupancy that is not subject to this Tariff."

Staff appropriately "recommends the proposed second paragraph under Applicability be deleted," correctly recognizing the unreasonableness of Duke's proposal to arbitrarily limit the applicability of the tariff and the fact the aforementioned language "vests too much discretion

with the Company."[68] Arbitrary limitations of the tariff in the manner set forth in this section, violates the principle of competitive neutrality in that it specifically enables the utility to put certain types of attachments and technology (e.g., wireless, WI-FI) at a competitive disadvantage relative to others (e.g., wireline cable). In addition, Duke does not additionally charge for or restrict incumbent telephone companies relative to the placement of overlashed equipment, terminal boxes, risers, or the like.[69]

This provision to limit the tariff's applicability is also not justified on a cost causation basis, as there is no additional cost burden to the utility associated with the types of attachments it seeks to preclude. With respect to overlashing in particular, there is no valid cost justification for requiring a separate permit or charge. Overlashing occurs on an attaching entity's preexisting and permitted attachment, and occupies the same foot of space for which the attacher is licensed to occupy. There is no additional cost burden to the utility associated with overlashing, nor is there any lost opportunity to the utility in terms of potential foregone use of space on the pole.

As found by the FCC in its decision not to require additional approval for overlashing (other than that for the preexisting host attachment), if anything "overlashing existing cable reduces construction disruption and associated expense."[70] The New York Public Service Commission reached a similar finding in its own pole investigation, on the basis of among other

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[68] Staff Report at 23.

[69] See Deposition Testimony of Ulrich Angleton, dated December 15, 2008, at 45-46 (Att. 13), Deposition of Teresa Brierly, dated December 15, 2008, at 28. (Excerpts of Teresa Brierly's deposition dated December 15, 2008 provided in Attachment 14 to this testimony.)

[70] 2001 FCC Pole Order, at ¶¶73-75.

considerations, the immaterial impact of overlashing "on the existing facilities' overall weight and bundle diameter."[71] Given the lack of a cost basis or other economic justification for a separate charge, a free market outcome would not unbundle the pricing of the overlashed equipment from that of the host attachment. The same is true for other ancillary equipment such as cable power supplies and riser cables which do not consume or otherwise preclude the use of usable space on a pole. Finally, Duke's proposal to arbitrarily limit the applicability of its tariff has no public interest rationale. To the contrary, if adopted as written, it would serve to raise costs to consumers of broadband and other advanced services without any corresponding public benefit.

Agreement

In the same manner that Duke proposes to restrict the type of attachment allowed pursuant to the occupancy tariff under the Applicability section, Duke proposes in this section the right to "specifically authorize the type of service to be provided, e.g., cable television." This provision would give Duke the ability, for example, to restrict a cable company from offering such advanced services as Voice over Internet Protocol (VoIP). As discussed in regard to the previous section of the tariff, to inject such restrictions into the tariff serves no cost causative or public interest purpose, and violates the concept of competitive neutrality.

This section would also give Duke undue discretion by inclusion of language that "expressly reserves [for Duke] "the right to establish terms and conditions in the Agreement that are not inconsistent with this Tariff." This particular language would effectively allow Duke to unilaterally change the terms and conditions to its own benefit, in further violation of the core

[71] *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues,* Order Adopting Policy

principles of effective regulation. Staff's finding in connection with the prior section of the tariff (and other following sections as well) of the unreasonableness of any term or condition that "vests too much discretion with the Company" applies in equal force to this section.

Application

This section contains another example of language that would provide Duke with unfettered discretion to exercise its monopoly control over essential pole and conduit facilities, and which Staff appropriately recommends be removed from tariff because "an attacher would have no recourse should the Applicant discriminatorily exercise this provision."[72] Specifically, Duke seeks the "sole right to determine the availability of such pole or conduit and shall be under no obligation to grant permission for its use by Licensee." Consistent with the other instances where Duke seeks "sole" discretion, this language would similarly afford Duke the opportunity to act in an arbitrary and discriminatory manner such as to competitively disadvantage a cable attacher relative to another attacher including the incumbent telephone company, Duke or Duke affiliate, and/or other company in which Duke may have an interest. Under federal law, the parties (utilities and third-party attachers) must agree that capacity is insufficient before any denial of access can occur, and such denials have to be applied by the utility in a non-discriminatory manner – meaning they would also apply to the utility's *own* attachments as well as to those of third-parties.[73]

Statement on Pole Attachments ("2004 NYPSC Pole Order") N.Y. P.U.C.LEXIS 306 (2004), Appendix A, pp. 8-9.

[72] Staff Report at 24.

[73] See 47 U.S.C. § 224(f), also *Southern Company v. FCC*, 293 F.3d 1338 (11th Cir. 2002) at 1346-1349.

This particular type of clause has the potential of creating an insurmountable barrier to third-party access that has no sound economic or public policy justification. From an economics perspective, the only time there is truly insufficient capacity on a pole is in those limited instances where make-ready work, including a pole change-out, is infeasible due to terrain, obstructions, zoning restrictions and other such objective conditions.[74] Such instances exist, although it is the rare exception that space cannot be rearranged or poles changed-out to make such accommodations. As recognized in a recent case before the FCC pertaining to this issue, "[w]hen capacity is available through rearrangement or expansion of a pole's height, *its capacity cannot be full* since there is no exclusion of another and no missed, foreclosed, or lost opportunity." [75] In this real economic sense, pole capacity is neither static nor finite, but dynamic in nature, such that the sharing of poles does not generally result in either a physical or economic exhaustion of the shared resource. This is true even if the pole appears "crowded."[76] The same is true for conduit, where the installation of inner duct in connection with third-party occupancy creates additional pathways within the conduit. The utility can actually end up with *more* pathways, i.e., greater available capacity, as a result of the third party's attachment. As is the

[74] "Reasonable examples of poles at full capacity might include poles already at maximum design height under overhead transmission lines, poles near airport runways with their height limited by the Federal Aviation Administration, or poles whose height is limited by local government regulations." *FCTA*, Complainants' Trial Brief, dated April 18, 2006, at 44.

[75] See, e.g.,*FCTA*, 22 FCC Rcd at ¶ 25.

[76] A pole, as with other facilities (e.g., airport, parking lot, office space) can be "crowded" or congested, without being at "full capacity" in the economic sense. For a facility to be at full capacity, it must be a situation where a user (be it an airplane, automobile, employee, or attachments) would actually be excluded from the facility because of a true capacity constraint or scarcity with respect to the underlying infrastructure. Such a situation is distinct from congestion or crowding, which often goes hand-in-hand with a lack of capacity, but which can have many other causes as well, including for instance, inefficient management practices or poor design. If a facility would be able to accommodate an additional user if it made certain operational changes or performed functions more efficiently, as is typically the case with poles, then it is not at full capacity.

case with additional pole capacity created through the make-ready process, the utility retains title to the inner duct and may use or lease the additional duct space not being used by the third party.

In addition, this section would limit access to Duke's conduit "to the Company or its designated representative." This language could be used in a discriminatory fashion to limit third-party access in a manner that leads to unreasonable cost and delay and puts the attacher at a competitive disadvantage. If safety or damage prevention is the motivating factor, a more reasonable approach would be for Duke to provide a list of specified qualifications and training, and any worker who meets these criteria could be permitted access to the leased facility.

Technical Specifications

This section specifies that all attachments be placed "in a manner satisfactory to the Company and so as not to interfere with the present or future use that the Company may desire to make," and moreover, Duke specifies that "[t]he Company shall be the sole judge as to the requirements for the present and future use of its poles, conduits, and equipment." This section violates the core principles for effective regulation at two levels. First, as now evident as a recurring pattern throughout the proposed tariff, Duke inappropriately asserts for itself the authority to be the "sole judge" in regard to a situation where it would have the incentive and opportunity to take a position that unfairly discriminated against and competitively disadvantaged the third-party attacher with no offsetting social benefit.

Second, because of the inherently uncertain nature of any "future use" of utility facilities, any assertion of future use as the basis to limit third-party access to utility poles or conduit would necessarily have to be based on objective criteria demonstrating (1) the utility's bona fide need

for that space, and (2) that the future need *would otherwise be precluded* because of the lack of available pole or conduit capacity. Otherwise, it would be trivial for the utility to say it required the space sought by a non-affiliated third-party entity for its own use or interest since by simply declaring so would result in the utility being able to impose additional costs on the third-party entity on virtually any pole or conduit in its network.

In economic terms, a real opportunity cost or identifiable cost burden to the utility associated with third-party occupancy of its poles or conduit exists only where it can be demonstrated an actual future use would be specifically precluded as a direct consequence of the third-party occupancy. As discussed in regard to the previous section, the circumstances where Duke's poles or conduits would be at an economic state of full capacity are extremely limited given the structurally dynamic nature of pole and conduit capacity. Hence, the potential likelihood a utility could abuse a "future use" clause to unreasonably delay, limit, or deny third-party access to pole conduit facilities far outweighs the potential likelihood the third-party occupancy would actually preclude a future use of the facility.

Another problem area in this section is the requirement that all attachments or occupancies comply with "any requirements that may be established by the Company." This statement is so generically broad and open-ended as to allow Duke the ability to set requirements that serve anticompetitive purposes with no public interest benefit. The section's required compliance with the requirements of the National Electrical Safety Code and "any other applicable regulations or codes promulgated by federal, state, local or other governmental authority having jurisdiction," in addition to the requirement that "Licensee shall take any necessary precautions....to protect all persons and property of all kinds against injury or damage" would appear to be sufficiently comprehensive to serve the legitimate safety purpose.

Replacement Costs

In this section, Duke seeks to recover from third-party attachers the "total cost" associated with the Company's replacement of a pole or conduit, including the costs of removing and transferring all existing attachments, "because of the necessity of providing adequate space or strength to accommodate the wireline attachment." As written, this condition would apply not only to those situations "at the request of Licensee" (i.e., at the time the Licensee seeks permission for initial attachment), but also at any such time as "to comply with the above mentioned codes and regulations."

Consistent with the fundamental principle of cost causation, costs, and by extension rates based on those costs, are "just and reasonable" in a meaningful economic sense when the entity causally responsible (i.e., the entity but for whose existence or action a cost would not have been incurred) is attributed those costs, but not materially more. As currently proposed, this section would allow the utility to assess a third-party attacher substantially more than the costs the attacher is causally responsible for. This is due to inappropriately broad language holding the third-party attacher potentially responsible for replacement costs incurred at any time and any manner and at the full discretion of the utility so as comply with unspecified and undefined "above mentioned codes and regulations," and that would include all costs related to the transfer, removal, and re-establishment of all existing or like attachments on the newly installed pole or conduit, including those of the utility owner.

In the absence of explicit language applying the principle of cost-causation, there is a real risk here an attacher could end up paying for replacement costs unrelated to its own generated need,

and including those to accommodate the subsequent attachments of others including Duke, and to deal with safety issues the attacher was not responsible for creating. Section 224, subsections (h) and (i), of the federal Pole Attachments Act contain specific language to address this very issue, by establishing that once a party obtains access to a pole, that party may not be forced to incur any expense for activities undertaken that solely benefit another party, or are undertaken in connection with an additional attachment or modification of an existing attachment sought by another party, including the utility pole owner.[77]

In addition, because this section would afford Duke the discretion to determine the time and need for replacements to comply with unspecified and undefined "above mentioned codes and regulations," there is also the risk this section could be used by Duke in a strategic and discriminatory manner to serve anti-competitive purposes and in violation of the principle of competitive neutrality.

Rearranging Costs

This section specifies the Licensee will reimburse Duke for all costs incurred by the Company and other licensees related to rearrangements made in connection with the Licensee's proposed attachment or occupancy. Similar to the preceding section, costs assigned pursuant to this section should be done in accordance with the cost causation principle, such that only those costs engendered at the time of the initial request for attachment and specifically related to the need to accommodate that initial attachment are the responsibility of the attacher. Consistent with Section 224 of the Communications Act, the attacher should not be assessed with any costs of

[77] 47 U.S.C.§ 224(h)-(i).

rearrangements pertaining to the need to accommodate other attachers (including the utility pole owner) and/or to deal with safety issues that the atttacher is not responsible for creating. Other state commissions that have certified authority over pole attachments have agreed.[78]

In addition, language in this section would give Duke and other licensees the discretion *not* to allow a third-party attacher onto Duke's pole or conduit, by refusing to make or allow the possible rearrangement of the facility to permit the new attachment to be accommodated □ notwithstanding the fact that the third-party attacher pays for all related rearrangement expenses. Allowing Duke and other licensees the ability to preclude a new third-party attachment for no reason other than an "unwillingness" to do so, enables Duke and other actual and potential competitors to construct what is tantamount to an absolute barrier to entry. Such explicit anti-competitive behavior is in clear violation of the core principles of effective pole regulation. Finally, there is language in this section to relieve the Company of any responsibility "for coordinating the relocation of third party attachments." This language is objectionable for two major reasons. First, as explicitly stated in Duke's proposed tariff in the Replacements section, Duke, as the utility pole owner, maintains all "rights, title or interest in such pole or conduit," "regardless of any payments by [a third-party] Licensee towards it cost." The utility pole owner stands to benefit in many concrete ways from the make-ready work improvements to its pole and conduit plant, fully paid for by third-party licensees. Along with the rights and other ownership benefits that the utility alone enjoys go the responsibilities of ownership such as the coordination

[78] The New York Public Service Commission agrees that "[i]f a legal attachment is made to a pole in compliance with safety standards, the legal Attacher should not be required to pay for rearrangement of its facilities for subsequent attachments," including those of the pole owner. *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues,* Order Adopting Policy Statement on Pole Attachments, 2004 N.Y. P.U.C. LEXIS 306 (2004).

and control function Duke seeks to avoid here. Moreover, because the rental rate that Duke charges third-party Licensees is a fully allocated cost, it recovers the pole attachment's allocated portion of administrative and general expenses relating to the coordination function. It is unreasonable for Duke to charge third-party attachers a rate based on fully allocated costs (as opposed to a rate based on a much lower marginal cost standard) but then propose to withhold some of those very functions those fully allocated costs encompass.

Inspections

This section, setting forth a new process for inspections of attachments and a set of penalties for unauthorized attachments found during the inspection process, contains a number of provisions that are problematic. First, as correctly recognized by Staff, Duke's proposal is punitive by design, and it is unreasonable to even entertain the notion of charging penalties for unauthorized attachments without first establishing a 'system-wide baseline…where all attachments have first been audited."[79] It serves no valid economic or public policy purpose, for example, to impose penalties for unauthorized attachments which apply to attachments (such as on drop poles) which at the time of their installation were not required to be separately permitted and therefore would not have been considered "unauthorized." The FCC, in a ruling on a similar proposal by a utility to impose unauthorized attachment fees retroactively to drop poles, found it would not be just or reasonable to do so until after the date the utility gave notice it would begin charging a pole attachment fee.[80]

[79] See Staff Report at 25.

[80] See Federal Communications Commission, *In the Matter of Mile Hi Cable Partners, LP; Mountain States Video, Inc., d/b/a TCI of Colorado, Inc.; United Cable Television of Colorado, Inc., d/b/a TCI of Colorado, Inc.; TCI Cablevision of Colorado, Inc.; Heritage Cablevision of Tennessee, Inc.; and TCI Cablevision of Florida, Inc.,*

A valid purpose of imposing penalties of this nature would be to provide an economic disincentive to third-parties to place unauthorized attachments and avoid paying an appropriate rental rate to recover the costs they are causally responsible for. Absent the baseline audit, it is not even known to what extent, if any, truly unauthorized attachments represent a significant problem in Duke's system in terms of real economic or safety consequence. Given the fact noted by Staff, that to its understanding, "the Applicant has never performed a complete, systematic, system-wide audit of its pole attachments,"[81] it would be reasonable to assume unauthorized attachments historically have not been a significant concern for Duke.

That Duke has set these penalties to apply retroactively (e.g. to attachments on drop poles which I understand Duke did not previously require a permit at time of installation),[82] and at a dollar amount far in excess of any foregone rental revenue is further demonstration of the punitive and anti-competitive nature of Duke's proposal. By way of comparison, Duke's proposed penalties of $100 per unauthorized attachment or occupancy plus 5 years annual rental (if Licensee has not participated in required audit) and $50 per unauthorized attachment plus 5 years annual rental (if Licensee has participated in required audit) far exceed the level of penalties found reasonable by the FCC. The maximum for such penalties found reasonable by the FCC is 5 times the annual pole rental (currently $4.25 for Duke).[83] As with the setting of an appropriate pole rental rate, it would also be instructive for the PUCO to examine the levels of unauthorized attachment

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Complainant v. Public Service Company of Colorado, Respondent/Applicant, Application for Review, File No. PA 98-003, ("Mile High") Order, FCC 02-95, dated March 28, 2002, at ¶12.

[81] See Staff Report at 25.

[82] See Deposition of Ulrich Angleton, dated December 15, 2008, at 53-54 (Att. 13).

[83] See FCC Mile-High Order, March 28, 2002, at ¶9.

penalties, if any, charged by peer utilities including sister Duke Energy utilities, prior to determining what would be an appropriate level for such charges for Duke in Ohio.

As a separate matter, requiring cable companies to get advance authorization to attach to a drop pole (i.e., go through a full-blown permitting process prior to being allowed to attach),[84] something I understand they have not been required historically by Duke to do, or risk unauthorized penalties going forward, raises a significant anti-competitive concern and potential impact on the competitive playing field. Drop poles are used, where necessary, to connect an individual customer's premises to the mainline distribution pole, such as in the case where the customer's premise is usually far from the mainline. By the very nature of drop poles, a cable company would not typically be able to plan in advance of a customer inquiry for service that it would need to attach to a drop pole in order to connect that customer. Requiring the cable company to go through the permitting process in advance of attaching to the drop pole would put the cable company at a significant competitive disadvantage relative to the incumbent telephone company or the electric utility since no such prior permitting requirement applies in the case of the latter two. The cable company alone would either have to face a considerable delay in getting service to the customer and risk losing that customer to a competitor, or face the risk of paying a potentially significant unauthorized attachment penalty.

Finally, this section also inappropriately vests Duke with "sole discretion," in this instance in regard to determining the frequency of periodic inspections/inventories. Because Duke proposes

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[84] See Deposition of Donald Storck, dated November 21, 2008, at 95-96. (Excerpts of Donald Storck's deposition, dated November 21, 2008, provided in Attachment 15 to this testimony.)

the Licensee "reimburse the Company for the expense of such inspections/inventories," Duke would be able to use the inspection process as a means of effectively increasing the costs of attachment for the Licensee for its own private gain. Duke would have both the opportunity and incentive to shift costs appropriately borne by the utility as part of its provision of core electricity services onto a third-party attacher, and also to impose unnecessary costs in a discriminatory manner strictly for anti-competitive purposes.

Safety Violations

In this section, Duke proposes another new penalty of $200 "for each wireline attachment or occupancy that violates the codes, regulations, or requirements set forth in Paragraph 3 [Technical Specifications] above or in the Agreement." In addition, Duke would require the Licensee within ten days of the date of notice to "ensure its occupancy is removed, rearranged, or changed as directed by the Company."

The anti-competitive aspects of this proposal are similar in nature to that of the preceding section concerning unauthorized attachment penalties. First, as recognized by Staff in connection with Duke's proposed penalties for unauthorized attachments, and again here related to penalties for safety violations, it is unreasonable to consider implementing a system of penalties "until after a complete audit of the system is performed and any violations are cured."[85]

[85] See Staff Report at 25.

Second, the issues concerning safety violations raised in this section, if appropriate, would apply to *all* attachments on the pole. It is my understanding that Duke would also be likely to have safety violations on the pole.[86] Moreover, it is my understanding that some of the safety violations this section would attribute to and hold the cable operator responsible for correcting could be due to actions by the utility pole owner, such as Duke's placement of additional equipment on the pole subsequent to the cable company's initial attachment.[87] To ensure a level playing field, and to serve the purported purpose of this section, i.e., to address any "hazard to the service rendered by the Company or other licensee," any such provision should apply even handedly to all attaching entities, including the incumbent telephone company and the pole owning utility itself. Otherwise, this provision is functioning more as a vehicle by which the utility can discriminatorily raise the costs of attachment to the cable company. Moreover, to properly incent the utility from making improper attachments, or using this provision in a discriminatory or anti-competitive manner, the fees collected should not go to the utility itself, but to an appropriate governmental entity charged with oversight authority such as the PUCO.

Finally, the provision that the Licensee would have only ten days after notice to remedy a claimed safety violation is on its face unreasonable and discriminatory, as it is my understanding that Duke would not subject either the incumbent telephone or itself to such an expedited time frame to remedy a violation.[88] By way of contrast, the Company is proposing it be given up to

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[86]See Deposition Testimony of Teresa Brierly, dated December 15, 2008, at 37-41 (Att. 14).

[87] See Deposition Testimony of Donald Storck, dated November 21, 2008, at 129-130 (Att. 15).

[88] See Deposition Testimony of Donald Storck, dated November 21, 2008, at 134-135 (Att. 15).

forty-five days to process a permit application, and even compared to the current thirty day application processing schedule requirement Staff is recommending the PUCO keep in place, the ten day timeframe Duke would impose unilaterally upon the cable company in this section would seem not even close to representing a balanced situation between the parties.

Expiration of Agreement

This section allows for the termination of the agreement "by either Party's giving to the other Party written notice at least sixty (60) days prior to the end of any yearly term." Upon notification, "Licensee shall completely remove its wireline attachments...or direct the Company to remove, at Licensee's expense...on or prior to the termination date, unless a new Agreement covering such poles or conduit has been executed by the Parties hereto."

As written, this section gives Duke unfettered discretion to terminate the agreement on an annual basis, and demand the Licensee enter a new Agreement offering much less favorable terms and conditions "on a take it or leave it basis" in order to keep its attachments to Duke poles and conduit intact. While the language theoretically gives "either Party' the ability to terminate the agreement annually, a clear asymmetry exists between Duke, as the monopoly owner of the pole and conduit facilities, and the Licensee who faces no practical choice but to attach to Duke's facilities. Simply put, "[p]ower companies have something that cable companies need: pole networks."[89] Indeed, it was this fact combined with Congressional concern about the prices, terms and conditions a utility could seek to extract from cable companies that led to the forced access provision of the 1996 Act, requiring utilities to provide access to cable companies subject

[89] *See Alabama Power*, 311 F.3d at 1362-1363.

to expressly limited exception.[90] As written, the language in this section would give Duke the ability to fully exploit its monopoly power in a complete end run around effective pole attachment regulation.

Q. MS. KRAVTIN, DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

A. Yes, it does.

[90] Id.

Attachment 1

Patricia D. Kravtin

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Swampscott, MA 01907
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Summary

Consulting economist with specialization in telecommunications, cable, and energy markets. Extensive knowledge of complex economic, policy and technical issues facing incumbents, new entrants, regulators, investors, and consumers in rapidly changing telecommunications, cable, and energy markets.

Experience

CONSULTING ECONOMIST

2000–Present Independent Consulting Swampscott, MA

Providing expert witness services and full range of economic, policy, and technical advisory services in the telecommunications, cable, and energy fields.

SENIOR VICE PRESIDENT/SENIOR ECONOMIST

1982–2000 Economics and Technology, Inc. Boston, MA

Active participant in regulatory proceedings in over thirty state jurisdictions, before the Federal Communications Commission, Federal Energy Regulatory Commission, and other international regulatory authorities on telecommunications, cable, and energy matters.

Provided expert witness and technical advisory services in connection with litigation and arbitration proceedings before state and federal regulatory agencies, and before U.S. district court, on behalf of diverse set of public and private sector clients (see Record of Prior Testimony).

Extensive cable television regulation expertise in connection with implementation of the Cable Act of 1992 and the Telecommunications Act of 1996 by the Federal Communications Commission and local franchising authorities.

Led analysis of wide range of issues related to: rates and rate policies; cost methodologies and allocations; productivity; cost benchmarking; business case studies for entry into cable, telephony, and broadband markets; development of competition; electric industry restructuring; incentive or performance based regulation; universal service; access charges; deployment of advanced services and broadband technologies; and access to pole

attachments and other rights-of-way.

Served as advisor to state regulatory agencies, assisting in negotiations with utilities, non-partial review of record evidence, deliberations and drafting of final decisions.

Author of numerous industry reports and papers on topics including market structure and competition, alternative forms of regulation, patterns of investment, telecommunications modernization, and broadband deployment (see listing of Reports and Studies).

Invited speaker before various national organizations, state legislative committees and participant in industry symposiums.

RESEARCH/POLICY ANALYST

1978–1980 Various Federal Agencies Washington, DC
Prepared economic impact analyses related to allocation of frequency spectrum (Federal Communications Commission).

Performed financial and statistical analysis of the effect of securities regulations on the acquisition of high-technology firms (Securities and Exchange Commission).

Prepared analyses and recommendations on national economic policy issues including capital recovery. (U.S. Dept. of Commerce).

Education

1980–1982 Massachusetts Institute of Technology Boston, MA
Graduate Study in the Ph.D. program in Economics (Abd).
General Examinations passed in fields of Government Regulation of Industry, Industrial Organization, and Urban and Regional Economics.

National Science Foundation Fellow.
1976–1980 George Washington University Washington, DC
B.A. with Distinction in Economics.

Phi Beta Kappa, Omicron Delta Epsilon in recognition of high scholastic achievement in field of Economics. Recipient of four-year honor scholarship.

Prof. Affiliation

American Economic Association

Reports and Studies (authored and co-authored)

Report on the Financial Viability of the Proposed Greenfield Overbuild in the City of Lincoln, California, prepared for Starstream Communications, August 12, 2003.

"Assessing SBC/Pacific's Progress in Eliminating Barriers to Entry, The Local Market in California is Not Yet 'Fully and Irreversibly Open," prepared for the California Association of Competitive Telecommunications Companies (CALTEL), August 2000.

"Final Report on the Qualifications of Wide Open West-Texas, LLC For a Cable Television Franchise in the City of Dallas," prepared for the City of Dallas, July 31, 2000.

"Final Report on the Qualifications of Western Integrated Networks of Texas Operating L.P. For a Cable Television Franchise in the City of Dallas," prepared for the City of Dallas, July 31, 2000.

"Price Cap Plan for USWC: Establishing Appropriate Price and Service Quality Incentives in Utah" prepared for The Division of Public Utilities, March, 2000.

"Building a Broadband America: The Competitive Keys to the Future of the Internet," prepared for The Competitive Broadband Coalition, May 1999.

"Broken Promises: A Review of Bell Atlantic-Pennsylvania's Performance Under Chapter 30," prepared for AT&T and MCI Telecommunications, June 1998.

"Analysis of Opportunities for Cross Subsidies Between GTA and GTA Cellular," prepared for Guam Cellular and Paging, submitted to the Guam Public Utilities Commission, July 11, 1997.

"Reply to Incumbent LEC Claims to Special Revenue Recovery Mechanisms," submitted in the Matter of Access Charge Reform in CC Docket 96-262, February 14, 1997.

"Assessing Incumbent LEC Claims to Special Revenue Recovery Mechanisms: Revenue opportunities, market assessments, and further empirical analysis of the 'Gap' between embedded and forward-looking costs," FCC CC Docket 96-262, January 29, 1997.

"Analysis of Incumbent LEC Embedded Investment: An Empirical Perspective on the 'Gap' between Historical Costs and Forward-looking TSLRIC," Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC CC 96-98, May 30, 1996.

"Reply to X-Factor Proposals for the FCC Long-Term LEC Price Cap Plan," prepared for the Ad Hoc Telecommunications User Committee, submitted in FCC CC Docket 94-1, March 1, 1996.

"Establishing the X-Factor for the FCC Long-Terms LEC Price Cap Plan," prepared for the Ad Hoc Telecommunications User Committee, submitted in FCC CC Docket 94-1, December 1995.

"The Economic Viability of Stentor's 'Beacon Initiative,' exploring the extent of its financial dependency upon revenues from services in the Utility Segment," prepared for Unitel, evidence before the Canadian Radio-television and Telecommunications Commission, March 1995.

"Fostering a Competitive Local Exchange Market in New Jersey: Blueprint for Development of a Fair Playing Field," prepared for the New Jersey Cable Television Association, January 1995.

"The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers," Feb. 1994.

"A Note on Facilitating Local Exchange Competition," prepared for E.P.G., Nov. 1991.

"Testing for Effective Competition in the Local Exchange," prepared for the E.P.G., October 1991.

"A Public Good/Private Good Framework for Identifying Pots Objectives for the Public Switched Network" prepared for the National Regulatory Research Institute, October 1991.

"Report on the Status of Telecommunications Regulation, Legislation, and modernization in the states of Arkansas, Kansas, Missouri, Nebraska, Oklahoma and Texas," prepared for the Mid-America Cable-TV Association, December 13, 1990.

"The U S Telecommunications Infrastructure and Economic Development," presented at the 18th Annual Telecommunications Policy Research Conference, Airlie, Virginia, October 1990.

"An Analysis of Outside Plant Provisioning and Utilization Practices of US West Communications in the State of Washington," prepared for the Washington Utilities and Transportation Commission, March 1990.

"Sustainability of Competition in Light of New Technologies," presented at the Twentieth Annual Williamsburg Conference of the Institute of Public Utilities, Williamsburg, VA, December 1988.

"Telecommunications Modernization: Who Pays?," prepared for the National Regulatory Research Institute, September 1988.

"Industry Structure and Competition in Telecommunications Markets: An Empirical Analysis," presented at the Seventh International Conference of the International Telecommunications Society, MIT, July 1988.

"Market Structure and Competition in the Michigan Telecommunications Industry," prepared for the Michigan Divestiture Research Fund Board, April 1988.

"Impact of Interstate Switched Access Charges on Information Service Providers - Analysis of Initial Comments," submitted in FCC CC Docket No. 87-215, October 26, 1987.

"An Economic Analysis of the Impact of Interstate Switched Access Charge Treatment on Information Service Providers," submitted in FCC CC Docket No. 87-215, September 24, 1987.

"Regulation and Technological Change: Assessment of the Nature and Extent of Competition From A Natural Industry Structure Perspective and Implications for Regulatory Policy Options," prepared for the State of New York in collaboration with the City of New York, February 1987.

"BOC Market Power and MFJ Restrictions: A Critical Analysis of the 'Competitive Market' Assumption," submitted to the Department of Justice, July 1986.

"Long-Run Regulation of AT&T: A Key Element of a Competitive Telecommunications Policy," *Telematics*, August 1984.

"Economic and Policy Considerations Supporting Continued Regulation of AT&T," submitted in FCC CC Docket No. 83-1147, June 1984.

"Multi-product Transportation Cost Functions," MIT Working Paper, September 1982.

Record of Prior Testimony

2008

Before the **Arkansas Public Service Commission,** *In the Matter of a Rulemaking Proceeding to Establish Pole Attachment Rules In Accordance With Act 740 of 2007*, Docket No. 08-073-R, filed May 13, 2008, reply filed June 3, 2008, Cross-examination, June 10, 2008.

Before the **Federal Communications Commission,** *In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments,* WC Docket No. 07-245, RM 11293, RM 11303, filed March 7, 2008, reply filed April 22, 2008.

2006

Before the **State of New Jersey Board of Public Utilities,** Office of Administrative Law, *in the Matter of the Verified Petition of TCG Delaware Valley, Inc. and Teleport Communications New York for an Order Requiring PSE&G Co. to Comply with the Board's Conduit Rental Regulations*, OAL Docket PUC 1191-06, BPU Docket No.EO0511005, filed September 29, 2006; rebuttal filed November 17, 2006.

Before the **Federal Communications Commission**, *In the Matter of Florida Cable Telecommunications Association, Inc., Comcast Cablevision of Panama City, Inc.; Mediacom Southeast, L.L.C.; and Cox Communications Gulf, L.L.C.; Complainants v. Gulf Power Company, Respondent.* EB Docket No. 04-381. Testimony on behalf of Complainants filed March 31, 2006, Deposition March 15, 2006, Cross-Examination April 26-27, 2006.

2005

Before the **United States District Court for the Eastern District of New York**, *Coastal Communication Service, Inc. and Telebeam Telecommunications Corporation, Plaintiffs - against –The City of New York and New York City Department of Information Technology and Telecommunications*, 02 Civ. 2300 (RJD) (SMG), Expert Report filed February 4, 2005; Rebuttal Expert Report, filed August 29, 2005, Deposition December 1, 2005.

2004

Before the **Ontario Energy Board**, *In the Matter of the Ontario Energy Board Act* 1998, S.O.1998, c.15, (Schedule B); and *In the Matter of an Application pursuant to section 74 of the Ontario Energy Board Act*, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licenses of electricity distributors, RP-2003-024, Reply Evidence, filed September 27, 2004 (jointly with Paul Glist), Cross-examination October 26-27, 2004.

2003

Before the **United States District Court for the Southern District of California,** *Level 3 Communications, LLC v. City of Santee,* Civil Action No. 02-CV-1193, Rebuttal Expert Report, filed July 18, 2003.

2002

Before the **New York State Public Service Commission**, *In the Matter of the Cable Television & Telecommunications Association of New York, Inc., Petitioner, v. Verizon New York, Inc., Respondent,* Affidavit filed December 19, 2002.

Before the **West Virginia Public Service Commission,** Community Antenna Service, Inc. v. Charter Communications, Case No. 01-0646-CTV-C, Live Direct Testimony and Cross-examination, June 12, 2002.

Before the **Public Service Commission of the District of Columbia,** Comcast Cablevision of the District, L.L.C., Complainant, v. Verizon Communications Inc. – Washington, D.C., Respondent, Formal Case No. 1006, Direct Testimony filed June 11, 2002; Rebuttal Testimony filed June 24, 2002.

Before the **Federal Communications Commission,** in *Cavalier Telephone, LLC, Complainant, v. Virginia Electric & Power Co., D/b/a Dominion Virginia Power, Respondent,* Case No. EB-02-MD-005, Declaration filed May 21, 2002.

Before the **Puerto Rico Telecommunications Regulatory Board,** in *Re: Petition of Centennial Puerto Rico License Corp. for arbitration pursuant to Sections 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Puerto Rico Telephone Company,* on behalf of Centennial Puerto Rico License Corp., Direct Testimony filed April 16, 2002; Deposition May 7, 2002, May 14, 2002; Reply Testimony filed May 20, 2002, Cross-examination May 22, 2002.

Before the **Federal Energy Regulatory Commission**, *in Re: In the Matter of* ***Transcontinental Gas Pipe Line Corporation,*** Docket No. RP01-245, on behalf of the University of Maryland-College Park, Johns Hopkins University and Johns Hopkins University Health System, and the North Carolina Utilities Commission, Cross-answering Testimony filed January 23, 2002; Rebuttal Testimony filed May 31, 2002, Cross-examination July 31, 2002.

2001

Before the **United States District Court for the Northern District of New York,** *TC Systems, Inc. and Teleport Communications-New York vs. Town of Colonie, New York,* Civil Action No. 00-CV-1972, Expert Report filed November 16, 2001; Deposition December 7, 2001, Rebuttal Expert Report filed December 20, 2001, Deposition January 9, 2002.

Before the **Federal Energy Regulatory Commission**, *in Re: In the Matter of* ***Transcontinental Gas Pipe Line Corporation,*** Docket No. RP01-245, on behalf of the University of Maryland-College Park, Johns Hopkins University and Johns Hopkins University Health System, and the North Carolina Utilities Commission, filed November 15, 2001.

Before the **Public Service Commission of the District of Columbia,** Comcast Cable Communications, Inc. d/b/a/Comcast Cable of Washington, D.C., Complainant, v. Verizon Communications Inc. – Washington, D.C., Respondent, filed September 21, 2001.

Before the **Public Utility Commission of Texas,** State Office of Administrative Hearings, SOAH Docket No. 473-00-1014, PUC Docket No. 22349, *Application of Texas-New Mexico Power Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201and Public Utility Commission Substantive Rule §25.344,* on behalf of Cities Served by Texas-New Mexico Power, filed January 25, 2001.

2000

Before the **Puerto Rico Telecommunications Regulatory Board,** in *AT&T of Puerto Rico, Inc. et al v. Puerto Rico Telephone Company, Inc.,Re: Dialing Parity,* Docket Nos. 97-Q-0008, 98-Q-0002, on behalf of Lambda Communications Inc., Cross-examination October 19-20, 2000.

Before the **Department of Telecommunications and Energy of the Commonwealth of Massachusetts,** Docket No. DTE 98-57 – Phase III, *Re: Bell Atlantic- Massachusetts Tariff No. 17 Digital Subscriber Line Compliance Filing and Line Sharing Filing,* (Panel Testimony with Joseph Riolo, Robert Williams, and Michael Clancy) on behalf of Rhythms Links Inc. and Covad Communications Company, filed July 10, 2000.

Before the **New York State Public Service Commission** in *Re: Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements* on behalf of the Cable Television & Telecommunications Association of New York, Inc., Direct Testimony filed June 26, 2000, Supplemental Testimony filed November 29, 2000.
Before the **Maryland Public Service Commission**,on behalf of Rhythms Links Inc. and Covad Communications Company, filed jointly with Terry L. Murray and Richard Cabe, May 5, 2000.

Before the **Public Utility Commission of Texas**, in *Re: Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996,* CC Docket No. 21982, on behalf of AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications Houston, Inc., filed March 31, 2000.

Before the **Federal Communications Commission**, in *Re: In the Matter of Price Caps Performance Review for Local Exchange Carriers, Access Charge Reform*, CC Dockets 94-1, 96-262, on behalf of Ad Hoc Telecommunications Users Committee, filed January 24, 2000.

Before the **Federal Energy Regulatory Commission**,in *Re: In the Matter of Northern Border Pipeline Company*, on behalf of the Canadian Association of Petroleum Producers and the Alberta Department of Resource Development, filed January 20, 2000.

1999

Before the **Connecticut Department of Public Utilities**, in *Re: Evaluation and Application to Modify Franchise Agreement by SBC Communications Inc., Southern New England telecommunications Corporation and SNET Personal Vision, Inc.*, Docket No. 99-04-02, on behalf of the Office of Consumer Counsel, filed June 22, 1999; cross- examination July 8, 1999

Before the **Illinois Commerce Commission**, in *Re: Illinois Commerce Commission on its own Motion v. Illinois Bell Telephone Company; et al: Investigation into Non-Cost Based Access Charge Rate Elements in the Intrastate Access Charges of the Incumbent Local Exchange Carriers in Illinois, Illinois Commerce Commission on its own Motion Investigation into Implicit Universal Service Subsidies in Intrastate Access Charges and to Investigate how these Subsidies should be Treated in the Future, Illinois Commerce Commission on its own motion Investigation into the Reasonableness of the LS2 Rate of Illinois Bell Telephone Company*, Docket No. 97-00601, 97-0602, 97-0516, Consolidated, on behalf of City of Chicago, filed January 4, 1999; rebuttal February 17, 1999.

Before the **Puerto Rico Telecommunications Regulatory Board**, in *Re: In the Matter of Arbitration of Interconnection Rates, Terms and Conditions between Centennial Wireless PCS Operations Corp., Lambda Communications Inc., and the Puerto Rico Telephone Company*, behalf of Centennial Wireless PCS Operations Corp. and Lambda Communications Inc., cross-examination February 16, 1999.

1998

Before the **California Public Utilities Commission**, in *Re: In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority for Pricing Flexibility and to Increase Prices of Certain Operator Services, to Reduce the Number of Monthly Assistance Call Allowances, and Adjust Prices for Four Centrex Optional Features*, Application No. 98-05-038, on behalf of County of Los Angeles, filed November 17, 1998, cross-examination, December 9, 1998.

Before the **Puerto Rico Telecommunications Regulatory Board**, in *Re: In the Matter of PRTC's Tariff K-2 (Intra-island access charges)*, Docket no. 97-Q-0001, 97-Q-0003, on behalf of Lambda Communications, Inc., filed October 9, 1998, cross-examination October 9, 1998.

Before the **Connecticut Department of Public Utility Control**, in *Re: Application of the Southern New England Telephone Company*, Docket no. 98-04-03, on behalf of the Connecticut Office of Consumer Counsel, filed August 17, 1998, cross-examination February 18, 1999.

Before the **California Public Utilities Commission**, in *Re: Pacific Gas & Electric General Rate Case*, A.97-12-020, on behalf of Office of Rate Payers Advocates CA PUC, filed June 8, 1998.

1997

Before the **South Carolina Public Service Commission**, in *Re: Proceeding to Review BellSouth Telecommunications, Inc.'s Cost for Unbundled Network Elements*, Docket no. 97-374-C, on behalf of the South Carolina Cable Television Association, filed November 17, 1997.

Before the **State Corporation Commission of Kansas**, in *Re: In the Matter of and Investigation to Determine whether the Exemption from Interconnection Granted by 47 U.S.C. 251(f) should be Terminated in the Dighton, Ellis, Wakeeney, and Hill City Exchanges*, Docket No. 98-GIMT-162-MIS, on behalf of classic Telephone, Inc., filed October 23, 1997.

Before the **Georgia Public Services Commission**, in *Re: Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services*, Docket No. 7061-U, on behalf of the Cable Television Association of Georgia, filed August 29, 1997, cross-examination September 19, 1997.

Before the **Federal Communications Commission**, in *Re: In the Matter of Price Caps Performance Review for Local Exchange Carriers, Access Charge Reform*, CC Dockets 94-1, 96-262, on behalf of Ad Hoc Telecommunications Users Committee, filed July 11, 1997.

Before the **Federal Communications Commission**, in *Re: In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, CS Docket 97-98, on behalf of NCTA, filed June 27, 1997.

Before the **Public Utilities Commission of the State of California**, in *Re: Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, R.93-04-003, I.93-04-002AT&T, filed March 19, 1997, reply April 7, 1997.

Before the **Puerto Rico Telecommunications Regulatory Board**, in *Re: In the Matter of Centennial Petition for Arbitration with PRTC*, on behalf of Centennial Cellular Corporation, filed February 14, 1997, supplemental March 10, 1997.

Before the **Federal Communications Commission**, in *Re: In the Matter of Access Charge Reform*, CC Docket 96-262, on behalf of AT&T, filed January 29, 1997, reply February 14, 1997.

1996

Before the **New Jersey Board of Public Utilities**, in *Re: In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services*, TX95120631, on behalf of New Jersey Cable Television Association, filed on August 30, 1996, reply September 9, 1997, October 20, 1997, cross-examination September 12, 1996, December 20, 1996.

Before the **State Corporation Commission of the State of Kansas**, in *Re: In the Matter of a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*, 190, 492-U 94-GIMT-478-GIT, on behalf of Kansas Cable Telecommunications Association, Inc., filed July 15, 1996, cross-examination August 14, 1996.

Before the **Federal Communications Commission**, in *Re: Price Caps Performance Review for Local Exchange Carriers*, CC Docket 94-1, on behalf of Ad Hoc Telecommunications Users Committee, filed July 12, 1996.

Before the **State Corporation Commission of the State of Kansas**, in *Re: In the Matter of a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*, 190, 492-U 94-GIMT-478-GIT, on behalf of Kansas Cable Telecommunications Association, Inc., filed June 14, 1996, cross-examination August 14, 1996.

Before the **Federal Communications Commission**, in *Re: In the Matter of Implementation of the Local Competition Provisions of Telecommunications Act of 1996*, CC Docket 96-98, filed May 1996.

Before the **Federal Communications Commission**, in *Re: Puerto Rico Telephone Company (Tariff FCC No, 1)*, Transmittal No. 1, on behalf of Centennial Cellular Corp., filed April 29, 1996.

Before the **United States District Court for the Eastern District of Tennessee at Greeneville**, in *Re: Richard R. Land, Individually and d/b/a The Outer Shell, and on behalf of all others similarly situated, Plaintiffs, vs. United Telephone-Southeast, Inc., Defendant*, CIV 2-93-55, filed December 7, 1996.

1995

Before the **Federal Communications Commission**, in *Re: Bentleyville Telephone Company Petition and Waiver of Sections 63.54 and 63.55 of the Commission's Rules and Application for Authority to Construct and Operate, Cable Television Facilities in its Telephone Service Area*, W-P-C-6817, on behalf of the Helicon Group, L.P. d/b/a Helicon Cablevision, filed November 2, 1995.

Before the **US District Court for the Eastern District of Tennessee**, in *Re: Richard R. Land, Individually and d/b/a The Outer Shell, and on behalf of all others similarly situated, Plaintiffs, vs. United Telephone-Southeast, Inc., Defendant*, 2-93-55, Class Action, filed June 12, 1995.

Before the **Connecticut Department of Public Utility Control**, in *Re: Application of SNET Company for approval to trial video dial tone transport and switching*, 95-03-10, on behalf of New England Cable TV Association, filed May 8, 1995, cross-examination May 12, 1995.

Before **Canadian Radio-Television and Telecommunications Commission**, in *Re: CRTC Order in Council 1994-1689*, Public Notice CRTC 1994-130 (Information Highway), filed March 10, 1995.

Before the **Federal Communications Commission**, in *Re: GTE Hawaii's Section 214 Application to provide Video Dialtone in Honolulu, Hawaii*, W-P-C- 6958, on behalf of Hawaii Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

Before the **Federal Communications Commission**, in *Re: GTE Hawaii's Section 214 Application to provide Video Dialtone in Ventura County*, W-P-C 6957, on behalf of the California Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

Before the **Federal Communications Commission**, in *Re: GTE Florida's Section 214 Application to Provide Video Dialtone in the Pinellas County and Pasco County, Florida areas*, W-P-C 6956, on behalf of Florida Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

Before the **Federal Communications Commission**, in *Re: GTE Virginia's Section 214 Application to provide Video Dialtone in the Manassas, Virginia area*, W-P-C 6956, on behalf of Virginia Cable TV Association, filed January 17, 1995 (Reply to Amended Applications).

1994

Before the **Federal Communications Commission**, in *Re: NET's Section 214 Application to provide Video Dialtone in Rhode Island and Massachusetts*, W-P-C 6982, W-P-C 6983, on behalf of New England Cable TV Association, filed December 22, 1994 (Reply to Supp. Responses).

Before the **State Corporation Commission of the State of Kansas**, in *Re: General Investigation into Competition*, 190, 492-U 94-GIMT-478-GIT, on behalf of Kansas CATV Association, filed November 14, 1994, cross-examination December 1, 1994.

Before the **Federal Communication Commission**, in *Re: Carolina Telephone's Section 214 Application to provide Video Dialtone in areas of North Carolina*, W-P-C 6999, on behalf of North Carolina Cable TV Association, filed October 20, 1994, reply November 8, 1994.

Before the **Federal Communication Commission**, in *Re: NET's Section 214 Application to provide Video Dialtone in Rhode Island and Massachusetts*, W-P-C 6982, W-P-C 6983, on behalf of New England Cable TV Association, filed September 8, 1994, reply October 3, 1994.

Before the **California Public Utilities Commission**, in *Re: Petition of GTE-California to Eliminate the Preapproval Requirement for Fiber Beyond the Feeder*, I.87-11-033, on behalf of California Bankers Clearing House, County of LA, filed August 24, 1994.

Before the **Federal Communications Commission**, in *Re: BellSouth Telecommunications Inc., Section 214 Application to provide Video Dialtone in Chamblee, GA and Dekalb County, GA*, W-P-C 6977, on behalf of Georgia Cable TV Association, filed August 5, 1994.

Before the **Federal Communications Commission**, in *Re: Bell Atlantic Telephone Companies Section 214 Application to provide Video Dialtone within their Telephone Services Areas*, W-P-C 6966, on behalf of Mid Atlantic Cable Coalition, filed July 28, 1994, reply August 22, 1994.

Before the **Federal Communication Commission**, in *Re: GTE Hawaii's 214 Application to provide Video Dialtone in Honolulu, Hawaii*, W-P-C 6958, on behalf of Hawaii Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communication Commission**, in *Re: GTE California's Section 214 Application to provide Video Dialtone in Ventura County*, W-P-C 6957, on behalf of California Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communication Commission**, in *Re: GTE Florida's 214 Application to provide Video Dialtone in the Pinellas and Pasco County, Florida areas*, W-P-C 6956, on behalf of Florida Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communication Commission**, in *Re: GTE Virginia's 214 Application to provide Video Dialtone in the Manassas, Virginia area*, W-P-C 6955, on behalf of the Virginia Cable TV Association, filed July 1, 1994, and July 29, 1994.

Before the **Federal Communications Commission**, in *Re: US WEST's Section 214 Application to provide Video Dialtone in Boise, Idaho and Salt Lake City, Utah*, W-P-C 6944-45, before the Idaho and Utah Cable TV Association, filed May 31, 1994.

Before the **Federal Communication Commission**, in *Re: US WEST's Section 214 Application to provide Video Dialtone in Portland, OR; Minneapolis, St. Paul, MN; and Denver, CO*, W-P-C 6919-22, on behalf of Minnesota & Oregon Cable TV Association, filed March 28, 1994.

Before the **Federal Communications Commission,** in *Re: Ameritech's Section 214 Application to provide Video Dialtone within areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin*, W-P-C-6926-30, on behalf of Great Lakes Cable Coalition, filed March 10, 1994, reply April 4, 1994.

Before the **Federal Communications Commission,** in *Re: Pacific Bell's Section 214 Application to provide Video Dialtone in Los Angeles, Orange County, San Diego, and Southern San Francisco Bay areas*, W-P-C-6913-16, on behalf of Comcast/Cablevision Inc., filed February 11, 1994, reply March 11, 1994.

Before the **Federal Communications Commission,** in *Re: SNET's Section 214 Application to provide Video Dialtone in Connecticut*, W-P-C 6858, on behalf of New England Cable TV Association, filed January 20, 1994, reply February 23, 1994.

1993

Before the **Arkansas Public Service Commission,** in *Re: Earnings Review of Southwestern Bell Telephone Company*, 92-260-U, on behalf of Arkansas Press Association, filed September 2, 1993.

Before the **United States District Court for the Eastern District of Tennessee at Greenville,** in *Re: Cleo Stinnett, et al. Vs. BellSouth Telecommunications, Inc. d/b/a/ South Central Bell Telephone Company, Defendant*, Civil Action No 2-92-207, Class Action, cross-examination May 10, 1993, and February 10, 1994.

Before the **Federal Communications Commission,** in *Re: NJ Bell's Section 214 Application to provide Video Dialtone service within Dover Township, and Ocean County, New Jersey*, W-P-C-6840, on behalf of New Jersey Cable TV Association, filed January 21, 1993.

1992

Before the **New Jersey Board of Regulatory Commissioners,** in *Re: NJ Bell Alternative Regulation*, T092030358, on behalf of NJ Cable TV Association, filed September 21, 1992.

Before the **New Hampshire Public Utilities Commission,** in *Re: Generic competition docket*, DR 90-002, on behalf of Office of the Consumer Advocate, filed May 1, 1992, reply July 10, 1992, Surrebuttal August 21, 1992.

Before the **New Jersey General assembly Transportation, Telecommunications, and Technology Committee,** *Concerning A-5063*, on behalf of NJ Cable TV Association, filed January 6, 1992.

1991

Before the **New Jersey Senate Transportation and Public Utilities Committee,** in *Re: Concernting Senate Bill S-3617*, on behalf of New Jersey Cable Television Association, filed December 10, 1991.

Before the **119th Ohio General Assembly Senate Select Committee on Telecommunications Infrastructure and Technology**, in *Re: Issues Surrounding Telecommunications Network Modernization*, on behalf of the Ohio Cable TV Association, filed March 7, 1991.

Before the **Tennessee Public Service Commission,** in *Re: Master Plan Development and TN Regulatory Reform Plan*, on behalf of TN Cable TV Association, filed February 20, 1991.

1990

Before the **Tennessee Public Service Commission,** in *Re: Earnings Investigation of South Central Bell,* 90-05953, on behalf of the TN Cable Television Association, filed September 28, 1990.

Before the **New York Public Service Commission,** in *Re: NYT Rates, 90-C-0191, on behalf of User Parties NY Clearing House Association*, filed July 13, 1990, Surrrebuttal July 30, 1990.

Before the **Louisiana Public Service Commission,** in *Re: South Central Bell Bidirectional Usage Rate Service*, U-18656, on behalf of Answerphone of New Orleans, Inc., Executive Services, Inc., King Telephone Answering Service, et al, filed January 11, 1990.

1989

Before the **Georgia Public Service Commission,** in *Re: Southern Bell Tariff Revision and Bidirectional Usage Rate Service*, 3896-U, on behalf of Atlanta Journal Const./Voice Information Services Company, Inc., GA Association of Telemessaging Services, Prodigy Services, Company, Telnet Communications, Corp., filed November 28, 1989.

Before the **New York State Public Service Commission,** in *Re: NYT Co. - Rate Moratorium Extension - Fifth Stage Filing*, 28961 Fifth Stage, on behalf of User Parties NY Clearing House Association Committee of Corporate Telecommunication Users, filed October 16, 1989.

Before the **Delaware Public Service Commission,** in *Re: Diamond State Telephone Co. Rate Case*, 86-20, on behalf of DE PSC, filed June 16, 1989.

Before the **Arizona Corporation Committee**, in *Re: General Rate Case*, 86-20, on behalf of Arizona Corporation Committee, filed March 6, 1989.

1988

Before **New York State Public Service Commission**, in *Re: NYT Rate Moratorium Extension*, 28961, on behalf of Capital Cities/ ABC, Inc., AMEX Co., CBS, Inc., NBC, Inc., filed December 23, 1988.

1989

Before **Rhode Island Public Utilities Commission**, in *Re: New England Telephone*, 1475, on behalf of RI Bankers Association, filed August 11, 1987, cross-examination August 21, 1987.

Before the **New York State Public Service Commission,** in *Re: General Rate Case Subject to Competition*, 29469, on behalf of AMEX Co., Capital Cities/ ABNC, Inc., NBC, Inc., filed April 17, 1987, cross-examination May 20, 1987.

Before the **Minnesota Public Utilities Commission,** in *Re: Northwestern Bell*, P-421/ M-86-508, on behalf of MN Bus. Utilities Users Counsel, filed February 10, 1987, cross-examination March 5, 1987.

1986

Before the **Kansas Public Utilities Commission,** in *Re: Southwestern Bell*, 127, 140-U, on behalf of Boeing Military, et al., filed August 15, 1986.

1985

Before the **Washington Utilities and Transportation Commission,** in *Re: Cost of Service Issues bearing on the Regulation of Telecommunications Company*, on behalf of US Department of Energy, filed November 18, 1985 (Reply Comments).

1984

Before the **Maine Public Utilities Commission,** in *Re: New England Telephone*, 83-213, on behalf of Staff, ME PUC, filed February 7, 1984, cross-examination March 16, 1984.

Before the **Minnesota Public Service Commission,** in *Re: South Central Bell*, U-4415, on behalf of MS PSC, filed January 24, 1984, cross-examination February 1984.

1983

Before the **Kentucky Public Service Commission,** in *Re: South Central Bell*, 8847, on behalf of KY PSC, filed November 28, 1983, cross-examination December 1983.

Before the **Florida Public Service Commission,** in *Re: Southern Bell Rate Case*, 820294-TP, on behalf of Florida Department of General Services, FL Ad Hoc Telecommunications Users, filed March 21, 1983, cross-examination May 5, 1983.

1982

Before the **Maine Public Utilities Commission,** in *Re: New England Telephone*, 82-142, on behalf of Staff, ME PUC, filed November 15, 1982, cross-examination December 9, 1982.

Before the **Kentucky Public Service Commission,** in *Re: South Central Bell*, 8467, on behalf of the Commonwealth of Kentucky, cross-examination August 26, 1982.

MAJOR COMPONENTS OF FCC POLE RATE FORMULA METHODOLOGY

The FCC pole rate formula consists of the following three major components: (1) the net investment per bare pole, (2) a carrying charge factor, and (3) the percent of capacity (i.e., total usable space) occupied by an attacher.[91]

Expressed as an equation, the FCC formula applicable to cable operators is as follows:

Maximum Pole Rental Rate =

[Net Bare Pole Cost] x [Carrying Charge Factor] x [Usage Percentage]

NET BARE POLE COST

The first step in calculating the net investment in bare pole cost is to calculate the utility's actual capital costs, based on properly booked costs as reported on the FERC Form 1 Report in Account 364 ("Poles, Towers and Fixtures"). The utility's capital cost in poles is expressed as net pole investment, defined as gross pole investment, less accumulated depreciation for pole plant, less accumulated deferred taxes applicable to poles. This generates the net investment in pole plant, which is then reduced by deducting the value (presumed to be 15% in the case of electric utilities) of pole appurtenances and other fixtures from which cable operators derive no benefit. This generates the net investment in "bare" pole plant, which is then divided by the statewide total of poles the utility has in service, producing a net cost per bare pole. The calculation of accumulated depreciation and accumulated deferred taxes associated with the 364 plant account is described below in the discussion of the next component of the FCC formula, the carrying charge factor. The final step in calculating a net bare pole cost is to divide the derived net

investment in pole plant figure by the total number of poles the utility has in service. While for telephone utilities, this number is publically reported in the ARMIS data base, there is no corresponding public reporting of poles in service in the FERC Form 1 for electric utilities. Rather, the number of poles is a data input that must be obtained from the utility in order to perform the rate formula calculation.

CARRYING CHARGE FACTOR

The carrying charge factor (CCF) is used to convert the net cost per pole into an annual rental amount. The carrying charge factor is comprised of the sum of five different expense factors - maintenance, depreciation, administrative, taxes, and overall rate of return, expressed as a percentage of expense to net plant in service. The derivation of the five elements of the Carrying Charge Factor (CCF) is as follows:

Administrative and Tax Elements: Expenses relating to these two elements of the CCF are tracked in the FERC Form 1 at the aggregate level of electric plant in service. Accordingly, for those two elements, under the FCC formula, the CCF is calculated by taking the relevant expense account figures per FERC Form 1 (Accounts 920-931,935, and Accounts 408-411[92]), respectively) and dividing them by net plant in service for total electric plant (i.e., gross electric plant less accumulated depreciation less accumulated deferred taxes.).

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[91] *See FCC Consolidated Partial Order on Reconsideration, CS Docket 97-98, 97-151, FCC 01-170,* at Appendix D-2 (May 25, 2001) (setting forth the specific formulas and FERC accounts to be used when calculating the pole rate for electric utilities).

[92] Account 411.1 is a credit income account relating to deferred income taxes, which offsets the current year's tax expense. Under accounting rules, the amount in this account must be subtracted when summing the various tax debit accounts.

Maintenance: Expenses relating to this element of the CCF is tracked at a more granular level in Account 593 ("Maintenance of Overhead Lines"), which under the FCC formula is associated with the following three distribution plant in service accounts: Account 364 ("Poles, Towers, and Fixtures"), 365 ("Overhead conductors and devices") and 369 ("Services"). Accordingly, the CCF for that element is calculated by dividing the amount of maintenance expense recorded in Account 593 by the net plant in service associated with each of these three individual accounts.

An additional step is required in the calculation of the net plant in service associated with these three distribution plant accounts, because neither accumulated depreciation nor accumulated deferred taxes is tracked at the level of granularity of the individual plant accounts in the FERC reporting system. Accumulated depreciation (Account 108) is reported at the more aggregated level of total distribution plant in service, and accumulated deferred taxes (Accounts 281-283,190[93]) are reported at an even greater level of aggregation, i.e., total electric plant in service. Under the FCC formula approach, expenses are allocated to individual plant accounts based on relative investment, using a method referred to as prorating.

To prorate, one simply takes the aggregate expense figure and multiplies that figure by the ratio of the individual plant in service account to the relevant aggregated plant in service figure. While prorating is simple to perform, it is important for reliability purposes that the aggregated plant in service figure contained in the denominator of the ratio and used to prorate expense be consistent with the level of aggregation of the expense figure contained in the numerator.

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[93]Account 190 is a debit asset account relating to deferred income taxes, and under accounting rules, the amount in this account must be subtracted when summing the various deferred tax liability (credit) accounts.

Accumulated depreciation is tracked at the level of total *distribution* plant; accordingly, it is properly prorated to Accounts 366, 367, and 369, by multiplying the aggregate accumulated depreciation figure for *distribution* plant by the ratio of gross plant in service for each of the respective individual accounts to gross *distribution* plant. Similarly, accumulated taxes is tracked at the level of total *electric* plant; accordingly, it is properly prorated to the individual accounts by multiplying the aggregate accumulated deferred tax figure for *electric* plant by the ratio of gross plant in service for the respective individual accounts to gross *electric* plant in service.

Depreciation: The CCF for depreciation is based on the FERC-prescribed depreciation rate for pole plant. Because that rate applies to *gross* investment, and the other elements of the CCF are expressed on a *net* plant basis, it is necessary to multiply the depreciation rate for conduit plant by the ratio of gross pole investment (Account 364) to the calculated net pole investment. The net pole investment associated with Account 364 is derived using the same method of proration described above for maintenance expense.

Overall rate of return: The FCC methodology uses the most current state authorized rate of return. Where none is available, the FCC default rate of return may be used.[94]

USAGE PERCENTAGE

A. Attaching parties only pay for a proportional percentage of the pole plant they actually use in relation to the amount of "usable space" on the pole. The use ratio is therefore expressed as the

[94] The FCC default rate of return is the rate of return authorized by the FCC (11.25%) in its last rate of return proceeding in 1990.

amount of space occupied by an attachment divided by the "usable space" on a utility pole. FCC rules presume that cable attachers occupy one foot of space on a utility pole.[95] It is also presumed that an average utility pole is 37.5 feet tall and has an average of 13.5 feet of usable space.[96] The presumed usage percentage is therefore 1/13.5 or 7.41%.

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[95] *See In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Mem. Op. and Second Report and Order, 72 FCC 2d 59 at ¶¶ 69-70 (May 23, 1979) (establishing a rebuttable presumption of one foot). *See also Petition to Adopt Rules Concerning Usable Space on Utility Poles*, FCC 84-325 at ¶ 10 (July 25, 1984) (affirming presumption); *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC 6453 at ¶ 19 (Apr. 3, 2000) (same).

[96] Based on National Electrical Safety Code guidelines and data received during rulemaking proceedings, and "[t]o avoid a pole by pole rate calculation, the Commission adopted rebuttable presumptions of (1) an average 37.5 foot pole height; (2) 13.5 feet of usable space; and (3) one foot as the amount of space a cable television attachment occupies." *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453 at ¶ 16 (Apr. 3, 2000).

MAJOR COMPONENTS OF FCC CONDUIT RATE FORMULA METHODOLOGY

Similar to poles, there are three major components of the FCC formula applied to conduit. These are (1) the net unit (linear) cost, (2) the percent of capacity occupied by an attacher, and (3) the carrying charge factor, as shown in the formula below:

Maximum Rate = [Net Linear Cost of a Conduit] x [Carrying Charge Rate] x [Percentage of Conduit Capacity]

NET LINEAR COST OF CONDUIT

Under the FCC methodology, the first step in deriving the net linear cost of conduit is the utilities' actual or embedded "booked" costs, as reported on the FERC Form 1 Report in Account 366 ("Underground Conduit"). For conduit, the utility's actual embedded cost is expressed in the methodology as net conduit investment, defined as gross conduit system investment account less accumulated depreciation, less accumulated deferred taxes. The net conduit system investment is then divided by total system conduit length to arrive at the net linear cost of conduit. Most typically, total system conduit length is measured in duct feet, although it can also be expressed in conduit feet with the formula applied using established relationships between duct and conduit feet within the system.

PERCENT OF CONDUIT CAPACITY OCCUPIED

A. When the net linear cost of conduit is expressed in duct feet, the percentage of conduit capacity is arrived simply by dividing one by the number of inner ducts within the duct. In instances where no inner duct has been installed within the duct, the FCC formula follows the so-called half-duct convention, which presumes an attacher occupies only half of the usable duct

space. Using that presumption, the percentage of conduit capacity used in the formula simplifies to one-half.[97]

However, the FCC has recognized that where the attacher pulls inner duct, the amount of usable space occupied by the attacher will generally be less than half, and use of the half-duct convention will create too large a presumption of usable space and an unreasonably high rental rate. In its 2001 pole attachment decision,[98] the FCC retained the half-duct convention, but revised the formula as described above to explicitly allow for the situation where the lessee pulls inner duct, consistent with the notion underlying the FCC approach that attachers should only be assessed for that amount of conduit space actually occupied. When there is the evidence to demonstrate an even smaller portion of the duct is occupied through the use of inner duct, that percentage should be used in the formula in place of the FCC presumption that a lessee occupies one-half of the duct. As a general rule, where there is credible occupancy-specific data, reliance on that data is preferable to the generic presumption.

CARRYING CHARGE FACTOR

A. The carrying charge factor (CCF) used to convert the net linear capital cost of conduit space into an annual rental amount is computed in exactly the same manner as described above for pole attachments. The only difference is that the FERC accounts specific to conduit are used in place of their pole counterparts. For example, in the calculation of the maintenance element, Account 594 ("Maintenance of Underground Lives"), is used in place of Account 593 ("Maintenance of

[97] Maximum Rate = [0.5 divided by Average Number of Ducts] times [Net Conduit Investment divided by System Conduit Length] times [Carrying Charge Rate].
[98] See Consolidated Partial Order on Reconsideration in FCC CS Docket 97-98, ¶95-98

Overhead Lines"), and correspondingly, the CCF for this element is calculated by dividing the amount of maintenance expense recorded in Account 594 by the net plant in service associated with the three relevant distribution plant in service accounts: Account 366 ("Underground Conduit"), 367 ("Underground conductors and devices") and 369 ("Services").

Duke Energy Ohio

Pole Attachment Formula For
Electric Utility Owners Using FERC Part 101 Accounts (excluding telecomm carriers)

A. Components

1 Rate of Return = 8.61%

2 Depreciation

Depreciation Rate X Gross Pole Investment / Net Pole Investment = 2.23% X * $179,585,197 / ($97,622,687 - $19,193,445) = 6.36%

3 Tax Expense

Tax Expense / (Net Distribution Plant in Service - Accumulated Depreciation - ADIT (Accts 190, 255, 281-283))

= 69,738,503 / 969,925,213 = 7.19%

(59,641,946 + 123,152 + 9,973,405) / (1,783,333,257 - (617,643,899) - (175,764,145))

4 Maintenance Expense

FERC Account 593 / (Investment in Accounts 364 + 365 + 369) - (Depreciation in 364 + 365 +369) - (ADIT in 364 + 365 + 369)

= 21,709,094 / 246,674,035 = 8.80%

* * * * * * * * *

5 Administrative Expense

Distribution Administrative and General Expense / (Net Distribution Plant in Service - Accumulated Depreciation - ADIT (Accts 190, 255, 281-283))

= 72,776,390 / 969,925,213 = 7.50%

72,776,390 / (1,783,333,257 - (617,643,899) - (175,764,145))

B. Distribution Pole Carrying Charge Rate — **% of Net Bare Pole Cost per Year**

Rate of Return	8.61%
Depreciation Expense	6.36%
Federal, State, and Other Taxes	7.19%
Maintenance Expense	8.80%
Administrative Expense	7.50%
Total Annual Carrying Charge Rate	38.46%

C. Net Investment Per Bare Pole

85.0% (Gross Pole Investment - Pole Depreciation Reserve) - ADIT for Poles / Number of Poles in Service

= $212.26

0.85 (* * *) / 251,358

D. Rate Calculation

1 Net Investment per Bare Pole x Annual Carrying Charge = Annual Pole Cost

$212.26 x 38.46% = $81.68

2 Annual Pole Cost x Attachment Percentage of Usable Pole Space = Attachment Rate for CATV

$81.68 x 7.41% = $6.05

This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009

Duke Energy Ohio

Pole Attachment Formula
For Electric Utility Pole Owners

	FCC Pole Attachment Rate Formula	Amount	Reference/Source
1	Gross Pole Investment	*	A. Below
2	Pole Depreciation Reserve	*	B1 below
3	Crossarm Factor	*	(1.minus 2.minus O1.) times 15 percent
4	Accumulated Deferred Taxes	($175,764,145)	O. Below
5	Net Pole Investment	$62,769,065	1. minus 2.minus O1.
6	Number of Poles	251,358	D. Below
7	Net Investment Per Bare Pole	$212.26	5. minus 3. divided by 6.
8	Pole Maintenance		
	A. Maintenance of Overhead Lines	$21,709,094	E. Below
	B. Total Investment in Poles	$527,134,526	A. plus F. Plus G.
	C. Depreciation Reserve	$224,126,082	B1+B2+B3
	D. Accumulated Deferred Taxes	$56,332,409	O1+O2+O3
	E. Total Investment in Poles - Net	$246,674,035	8B. minus 8C. Minus 8D.
	F. Pole Maintenance Ratio	8.80%	8A. divided by 8E.
9	Depreciation	6.36%	(1. divided by (1. minus 2. minus O1.)) times H.
10	Administration	7.50%	(I. divided by (J. minus K. minus O))
11	Taxes (Normalized)	7.19%	(L. through N.) divided by (J. minus K minus O)
12	Rate of Return	8.61%	T. Below
13	Total Carrying Charge	36.46%	8F. plus (9. through 12.)
14	Allocated Space	7.41%	1 divided by 13.5 (Pole Space Reserved)
15	Maximum Rate	$6.05	(7. times 13.) times 14.

Input Data

A.	Poles, Towers, & Fixtures (Acctg.364)	*	OCTA TY Calculation based on CPR Ledger 101 Acctg (OCTA Deposition Exh. 14)
B.	1. Accum Depr. for FERC Acctg 364	*	Per Schedule WPB-3.3b, Witness C.J. Council adjusted to match OCTA corrected 364 plant investment
	2. Accum Depr. for FERC Acctg 365	*	Per Schedule WPB-3.3b, Witness C.J. Council
	3. Accum Depr. for FERC Acctg 369	$34,957,075	Per Schedule WPB-3.3b, Witness C.J. Council
C.	Distribution Plant	$1,644,636,777	Staff Report Schedule B-1
D.	Number of Distribution Poles	251,358	PD Process Improvement -Nancy Musser adjusted per OCTA TY Calculation
E.	Mtce of Overhead Lines (Acctg. 593)	$21,709,094	Applicant's Schedule C-2.1
F.	Overhead Conductors & Devices (Acctg. 365)	294,779,890	Per Schedule WPB-2.3b, Witness C.J. Council
G.	Services (Acctg. 369)	52,769,439	Per Schedule WPB-2.3d, Witness C.J. Council
H.	Depreciation Rate - Distribution Property	2.23%	Staff Report Schedule B-3.2a
I.	Distribution Admin. & Gen. Exps.	$72,778,360	Applicant's Schedule C-2 and Staff's Schedule C-3
J.	Net Distribution Plant in Service	$1,763,333,257	Staff's Schedule B-1
K.	Accum. Depr. - Utility Plant in Service	($617,643,899)	Staff's Schedule B-1
L.	Taxes Other Than Income Taxes	$59,641,948	Staff's Schedule C-2
M.	State Income Taxes Expense	$123,152	Staff's Schedule C-4
N.	Federal Income Taxes Expense	$9,973,405	Staff's Schedule C-4
O.	Accumulated Deferred Inc. Taxes (Acct 190, 255, 281-283)	($175,764,145)	Per Schedule B-6, Witness W.D. Wathen
	1. ADIT for Poles (Acct 364)	$18,193,445	Deferred Tax Calculation Worksheet
	2. ADIT for Overhead Conductor (Acct 365)	$31,496,935	Deferred Tax Calculation Worksheet
	3. ADIT for Services (Acct 369)	$5,642,028	Deferred Tax Calculation Worksheet
P.	Accum. Def Invest Tax Credits (Acct. 255)	(182,083)	Per Schedule B-6, Witness W.D. Wathen
Q.	Accum. Defer Inc Taxes - Accel. Amort. (Acct. 281)	-	Per Schedule B-6, Witness W.D. Wathen
R.	Accum. Defer Inc Taxes - Other Property (Acct. 282)	(197,676,639)	Per Schedule B-6, Witness W.D. Wathen
S.	Accum. Defer Inc Taxes - Other (Acct. 283)	(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
T.	Rate of Return	8.61%	Staff Report Schedule D-1, Midpoint
U.	Space Occupied	1.00	FCC Order Docket 97-151
V.	Usable Space	13.5	FCC Order Docket 97-151
X.	Pole Height	37.5	FCC Order Docket 97-151

This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009

Duke Energy Ohio
Allocation of Distribution Accumulated Deferred Tax Balances (Acct. 190)
To Plant Accounts 364, 365 and 369
As of March 31, 2008

			Allocated ADIT Amounts	FERC Form No. 1 Source
			($)	
Accumulated Deferred Taxes (Acct. 190)			27,049,300	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Investment Tax Credits (Acct. 255)			(182,083)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Accel. Amort. (Acct. 281)			-	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other Property (Acct. 282)			(197,878,639)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other (Acct. 283)			(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
Accumulated Deferred Taxes for Electric			(175,764,145)	
		% of Total		
Distribution Electric Plant in Service[1]	($)		($)	
Total Plant	1,644,636,777	100.00%		Staff's Schedule B-1
Poles (Acct. 364)	*	*	*	s C.J. Council as revised by OCTA TY Adjustment
Overhead Conductor (Acct. 365)	*	*	*	NPB-2.3b, Witness C.J. Council
Services (Acct. 369)				NPB-2.3b, Witness C.J. Council
Total Accts 364, 365 and 369			56,332,409	

[1] Duke Energy 2007 FERC Form No. 1

This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009

Acct 364 101 Accounting Adjusted for Test Yr

Revised 364 Plant Yr	Acct Test	Revised Acct 364 YRE 07	Difference $Plant	% increase in $ Plant End 07 to Test Year	Yr	CPR Ledger 101 Corrected 364 Plant YRE 07	CPR Ledger 101 Corrected 364 Plant Test Yr Adjusted	$ Diff Duke Revised and Corrected 364 TY Adj
$ 225,327,638		$223,125,044	$2,202,594	0.99%		$ *	*	*

Acct 364 Depreciation Reserve Adjusted for 101 Accounting

Orig DE 364 Plant YR 07	Revised 364 Plant YR 07	$ Diff Orig and Rev 364 Plant YRE 07	Orig DE 364 Depreciation YR 07	Revised 364 Depreciation YR 07	Difference $Depreciation	% Decrease $Depreciaton per $ Decrease Plant	$ Diff Duke Revised and Corrected 364 TY Adj	$ Difference Depreciation Applying Duke % Decrease
$ 284,535,121	$223,125,044	$(61,410,077)	$ *	*	*	3.16%	*	*

Account 364 Depreciation Test Yr	$ Difference Depreciation Applying Duke % Decrease	Adjusted Account 364 Depreciation Test Yr
$ *	*	*

Distribution Pole Count Adjusted for Test Yr

YRE 07	% Incr $Plant YR07 to TY	TY Adjusted Pole Count
248,901	0.99%	251,358

Sources:
Attachment Staff DR-60-001f Schedule B-3, Witness Council
Attachment Staff DR-60-001j WPB-3.3b, Witness Council
Attachment Staff DR-60-001e WPB-2.3b, Witness Council
Attachment DLS-2

This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009

Duke Energy Ohio

Conduit Attachment Formula For
Electric Utility Owners Using FERC Part 101 Accounts (excluding telecomm carriers)

A. Components

1 Rate of Return = 8.61%

2 Depreciation

Depreciation Rate X Gross Conduit Investment / Net Conduit Investment = 1.85% X $97,573,665 / ($97,573,665 - $29,403,258 - $10,422,814) = 3.13%

3 Tax Expense

Tax Expense / (Net Distribution Plant in Service - Accumulated Depreciation - ADIT (Acct. 190, 255, 281-283))

(58,641,946 + 123,152 + 9,973,405) / (1,763,333,257 - (617,643,899) - (175,764,145)) = 69,738,503 / 969,925,213 = 7.19%

4 Maintenance Expense

FERC Account 594 / (Investment in Accounts 366 + 367 + 369) - (Depreciation in 366 + 367 +369) - (ADIT in 366 + 367 + 369)

2,670,893 / (97,573,665 + 271,796,728 + 52,769,439 - 29,403,258 + 60,056,806 + 34,957,075 - 10,422,814 + 29,063,813 + 5,842,029) = 2,670,893 / 252,604,057 = 1.06%

5 Administrative Expense

Distribution Administrative and General Expense / (Net Distribution Plant in Service - Accumulated Depreciation - ADIT (Acct 190, 255, 281-283))

72,778,390 / (1,763,333,257 - (617,643,899) - (175,764,145)) = 72,778,390 / 969,925,213 = 7.50%

B. Distribution Conduit Carrying Charge Rate

	% of Net Conduit Cost per Year
Rate of Return	8.61%
Depreciation Expense	3.13%
Federal, State, and Other Taxes	7.19%
Maintenance Expense	1.06%
Administrative Expense	7.50%
Total Annual Carrying Charge Rate	27.48%

C. Net Conduit Investment

(Gross Conduit Investment - Conduit Depreciation Reserve - ADIT for Conduit) / Number of Duct Feet of Distribution Conduit

1 (97,573,665 - 29,403,258 - 10,422,814) / 14,532,268 = $3.97

D. Rate Calculation

1 Net Investment per Duct Foot of Conduit x Annual Carrying Charge = Annual Cost per Duct Foot

$3.97 x 27.48% = $1.09

2 Annual Conduit Cost Per Duct Foot of Conduit x Occupancy Percentage = Attachment Rate for CATV

$1.09 x 50.00% = $0.55

Duke Energy Ohio

Conduit Attachment Formula
For Electric Utility Conduit Owners

	FCC Conduit Rate Formula	Amount	Reference/Source
1	Gross Conduit Investment	$97,573,685	A. Below
2	Conduit Depreciation Reserve	$29,403,258	B1 below
3			
4	Accumulated Deferred Taxes	($175,764,145)	O. Below
5	Net Conduit Investment	$57,747,613	1. minus 2.minus O1.
6	Duct Feet of Distribution Conduit	14,532,269	D. Below
7	Net Investment Per Duct Foot	$3.97	5. minus 3. divided by 6.
8	Conduit Maintenance		
	A. Maintenance of Underground Lines	$2,670,893	E. Below
	B. Total Investment in Conduit	$422,139,852	A. plus F. Plus G.
	C. Depreciation Reserve	$124,417,139	B1+B2+B3
	D. Accumulated Deferred Taxes	$45,118,656	O1+O2+O3
	E. Total Investment - Conduit	$252,604,057	8B. minus 8C. Minus 8D.
	F. Conduit Maintenance Ratio	1.06%	8A. divided by 8E.
9	Depreciation	3.13%	(1. divided by (1. minus 2. minus O1.)) times H.
10	Administration	7.50%	(I. divided by (J. minus K. minus O))
11	Taxes (Normalized)	7.19%	(L. through N.) divided by (J. minus K minus O)
12	Rate of Return	8.61%	T. Below
13	Total Carrying Charge	27.48%	8F. plus (9. through 12.)
14	Allocated Space	50.00%	1 divided by 2 ducts per conduit (presumptive conduit capacity occupied)
15	Maximum Rate	$0.55	(7. times 13.) times 14.

Input Data

A.	Underground Conduit (Acctg.366)	$97,573,685	Per Schedule B-3, Witness C.J. Council
B.	1. Accum Depr. for FERC Acctg 366	$29,403,258	Per Schedule WPB-3.3b, Witness C.J. Council
	2. Accum Depr. for FERC Acctg 367	$60,056,806	Per Schedule WPB-3.3b, Witness C.J. Council
	3. Accum Depr. for FERC Acctg 369	$34,957,075	Per Schedule WPB-3.3b, Witness C.J. Council
C.	Distribution Plant	$1,844,636,777	Staff Report Schedule B-1
D.	Number of Duct Feet of Conduit	14,532,269	OCTA-INT-02-020 Adjusted per OCTA TY Calculation
E.	Mtce of Underground Lines (Acctg. 594)	$2,670,893	FERC Form 1, pg 322, line 150, col B
F.	Underground Conductors & Devices (Acctg. 367)	271,796,728	Per Schedule WPB-2.3b, Witness C.J. Council
G.	Services (Acctg. 369)	52,769,439	Per Schedule WPB-2.3d, Witness C.J. Council
H.	Depreciation Rate - Distribution Property	1.85%	Staff Report Schedule B-3.2a
I.	Distribution Admin. & Gen. Exps.	$72,778,390	Applicant's Schedule C-2 and Staff's Schedule C-3
J.	Net Distribution Plant in Service	$1,763,333,257	Staff's Schedule B-1
K.	Accum. Depr. - Utility Plant in Service	($617,643,899)	Staff's Schedule B-1
L.	Taxes Other Than Income Taxes	$59,641,946	Staff's Schedule C-2
M.	State Income Taxes Expense	$123,152	Staff's Schedule C-4
N.	Federal Income Taxes Expense	$9,973,405	Staff's Schedule C-4
O.	Accumulated Deferred Inc. Taxes (Acct 190, 255, 281-283)	($175,764,145)	Per Schedule B-6, Witness W.D. Wathen
	1. ADIT for Conduit (Acct 366)	$10,422,814	Deferred Tax Calculation Worksheet
	2. ADIT for Underground Conductor (Acct 367)	$29,053,813	Deferred Tax Calculation Worksheet
	3. ADIT for Services (Acct 369)	$5,642,029	Deferred Tax Calculation Worksheet
P.	Accum. Def Invest Tax Credits (Acct. 255)	(182,083)	Per Schedule B-6, Witness W.D. Wathen
Q.	Accum. Defer Inc Taxes - Accel. Amort. (Acct. 281)	-	Per Schedule B-6, Witness W.D. Wathen
R.	Accum. Defer Inc Taxes - Other Property (Acct. 282)	(197,878,639)	Per Schedule B-6, Witness W.D. Wathen
S.	Accum. Defer Inc Taxes - Other (Acct. 283)	(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
T.	Rate of Return	8.61%	Staff Report Schedule D-1, Midpoint
U.	Space Occupied	1.00	FCC Order Docket 97-151
V.	Number inner ducts per conduit	2	FCC Order Docket 97-151

Duke Energy Ohio
Allocation of Distribution Accumulated Deferred Tax Balances (Acct. 190)
To Plant Accounts 366, 367 and 369
As of March 31, 2008

			Allocated ADIT Amounts	FERC Form No. 1 Source
			($)	
Accumulated Deferred Taxes (Acct. 190)			27,049,300	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Investment Tax Credits (Acct. 255)			(182,083)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Accel. Amort. (Acct. 281)			-	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other Property (Acct. 282)			(197,878,639)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other (Acct. 283)			(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
Accumulated Deferred Taxes for Electric			(175,764,145)	
		% of Total		
Distribution Electric Plant in Service[1]	($)		($)	
Total Plant	1,644,636,777	100.00%		Staff's Schedule B-1
Conduit (Acct. 366)	97,573,685	5.93%	10,422,814	WPB-2.3b, Witness C.J. Council
Underground Conductor (Acct. 367)	271,796,728	16.53%	29,053,813	WPB-2.3b, Witness C.J. Council
Services (Acct. 369)	52,769,439	3.21%	5,642,029	WPB-2.3b, Witness C.J. Council
Total Accts 364, 365 and 369			45,118,656	

[1] Duke Energy 2007 FERC Form No. 1

OCTA Test Year Adjustments
Duke Energy - Ohio

Acct 366 Adjusted for Test Yr

366 Plant Test Yr	366 Plant YRE 07	$ Difference Gross Plant	% incr TY Plant
$ 97,573,685	$97,189,588	$384,097	0.40%

Duct Feet of Conduit Adjusted for Test Yr

YRE 07	% incr TY Plant	TY Adjusted Pole Count
14,475,063	0.40%	14,532,269

Sources:
Attachment Staff DR-60-001f Schedule B-3, Witness Council
Attachment Staff DR-60-001j WPB-3.3c, Witness Council
Attachment Staff DR-60-001e WPB-2.3c, Witness Council
Duke Response to OCTA-INT-02-020

Attachment 6
Excerpts of Deposition of Donald Storck of January 29, 2009

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

DEPOSITION OF: DONALD STORCK (cont.)

January 29, 2009

2:50 p.m.

REPORTED BY:

Kristina L. Pedersen

me ask you this. The pole number that is the denominator there, the 248,901 poles; do you see that?

A. Yes.

Q. That's a number that purports to be as of year-end 2007, correct?

A. I'd have to verify where that came from. I believe it is, but I need to -- subject to check.

Q. What would you use to check?

A. I received an e-mail which gave me that number from the Small World system.

Q. Who did that come from?

A. Nancy Musser.

Q. Okay. You're aware that I've asked for all documents on derivation of the pole number?

A. (No response.)

Q. Do you have any other documents other than an e-mail that relates to that pole number?

A. Nope. That's the only document I have.

Q. Okay. But you believe that is a year-end number subject to check?

A. Yes.

Q. Okay. So under "C" here what we have is we have a year-end number for a pole investment of 223,000,000. We have a year-end number for

Attachment 7
Excerpts of Deposition of James Dean of January 30, 2009

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

DEPOSITION OF: JAMES DEAN (cont.)

January 30, 2009

9:00 a.m.

REPORTED BY:

Kristina L. Pedersen

should have done at the beginning here which is to refer you to Exhibit Number 19. This is a notice of rescheduling of the deposition dated January 13 and ask you whether you are here to testify about the Subjects for Examination 8 through 14?

A. Yes.

Q. Okay. Now, in terms of the errors that were contained in 01-004 you mentioned that there were some transfers. Were there any other errors?

A. I do see a change in the 2003 number that was recorded here.

Q. Which number?

A. For the additions.

Q. And what was that change?

A. (No response.)

Q. Well, the numbers will speak for themselves. But there was an increase in the amount for additions --

A. Correct.

Q. -- specified, right?

A. Yes.

Q. All right. Do you know what the basis was for the -- is the number that is now contained in Exhibit Number 21 -- is that the correct number for

that?

A. Is that a question to me?

Q. Yes.

MS. SPILLER: Is that number accurate I think is the question.

A. Yes.

Q. The $9,000,000 number?

A. Yes.

Q. All right. Is the number also different for the additions for 2004?

A. Yes. There seems to be approximately an $800 difference.

Q. And what was the reason for those errors?

A. When it was tied back to the FERC, I'm aware of the $800 error. There was an $800 adjustment that was on the FERC that had been shifted over -- shifted in the FERC to an adjustment column on the original document that had been included here on the document provided on POD-01-004 in the addition column.

Q. Well, there weren't any adjustments shown in POD-01-004, were there?

A. No, there was not.

Q. And there were no transfers reflected, right?

A. That is correct.

Q. This document, POD-01-004, that purported to be a summary of the CPRs, correct?

A. Correct.

Q. Now, in December, around December 23, OCTA was supplied INT-02-015 which purports to be a summary of the CPR as the additions and retirements for Account 364 for the years 1993 through 1999; do you see that?

A. Yes.

Q. Okay. Were there any errors in that?

A. Yes.

Q. Who prepared this document, INT-02-015?

A. I would have to go back and look in my notes for that to discover that.

Q. So you don't know who prepared it?

A. It was either -- it could have been Roger Selm or myself at that time.

Q. And if you did not prepare it, did you review it before it was submitted to OCTA?

A. I do not recall reviewing it before then.

Q. But you may have prepared it?

A. Yes. I know that I had prepared the INT-03-022.

Q. Well, I'm not going to -- I'm not there yet. The quantity numbers reflected in INT-02-015, do you see that they're all different than they -- the quantity numbers that are reflected in INT-03-022?

MS. SPILLER: Again, object to the form. Go ahead.

A. Yes.

Q. Can you tell me why they were -- well, are they correctly stated in 03-022?

A. Yes.

Q. How do you know that?

A. I prepared it. I reviewed it. I tied all the numbers that I could dollar-wise to the FERC.

Q. Okay. You tied them to the FERC. Did you tie them --

A. Dollar-wise.

Q. -- did you tie them dollar-wise to the CPR records?

A. Yes.

Q. How did you do that?

A. By running the Power Plant system, turning it back, looking at all the activity, and asking it for a result of what the additions, what the retirements were, and what the balance was.

Q. And when they didn't coincide exactly, were there transfer amounts that reflect that -- those differences?

A. There are transfers amounts that have been added to this, yes.

Q. And the transfer amounts were placed there to tie the CPRs to the purported FERC numbers?

A. The transfers tied to the FERC had to be added there to balance. And the quantities were adjusted for the transfers and also for -- in Power Plant there is quantities that may have a zero value. The Power Plant system does not show those initially. You have to turn on all activities to see that. As I rolled this back I discovered there was a few quantities that had a zero value. That was one reason that the quantities changed.

Q. Well, please don't confuse the quantities and the dollar amounts, all right?

A. Okay.

Q. First of all, let's talk about the dollar amounts. There are transfer amounts reflected on 03-022?

A. Correct.

Q. Are there records that Duke has of the -- or

had at the time that you were preparing 03-022 for those transfers?

A. Yes.

Q. What was the form of those records?

A. The form of the record is a report out of Power Plant indicating what the transfers were.

Q. Okay. Now, Power Plant was installed in 2000, correct?

A. That is correct.

Q. And so prior to 2000 how did you determine the amount of the transfers?

A. Prior to 2000 I used the FERC reports.

Q. So you used the transfers to tie the -- to take the year-end CPR number and have it coincide with the number that was reported to FERC?

A. Correct.

Q. Now, for the years 2000 to 2007 does Duke have -- did Duke have a transfer record in its files or its computer system reflecting the amounts of the transfers that are listed on 03-022?

A. From 2000 through 2007, yes.

Q. And how were those transfer amounts recorded in the records?

A. (No response.)

Q. I didn't understand your answer to that.
A. And I'm not understanding your question. I'm sorry.
Q. Okay. Well, let me --
A. Can you -- the transfers --
Q. -- well, we'll come back to that.
A. Okay.
Q. Okay. For the quantity numbers reflected on 03-022 from 1993 through 2000, those numbers are all different than they were in INT-02-015 --
MS. SPILLER: I'm going to object --
Q. -- do you see that?
MS. SPILLER: -- to the form. There are three columns of quantity listed here.
MR. GILLESPIE: That's fair enough.
Q. I'm talking about the quantity column that is the second to last column on the page of 03-022. This is the year-end quantity number, correct?
A. The '93 through '99 on 03-022 ties to the historical CPRs, yes.
Q. Okay. Can you explain to me why the numbers in the similar column on 02-015 did not also tie to the year-end quantity numbers for the CPR records?
A. I would believe that when they created the

quantities, they did not go back to the original CPRs to tie back. They had taken the information from the 2000 and worked their process down based upon addition and subtraction of the adds and retires.

Q. Now, 03-022, both the additions amounts and the final year-end amounts continue to reflect items that were incorrectly recorded in Account 364, GL 106, correct?

A. That is correct.

Q. Can you tell me why those amounts have not been corrected on this summary?

A. The reason these were not corrected is because we made no attempt to stay in sync with the FERC reports. We did not try to go back and change the historical data for this.

Q. At the time that 03-022 was prepared you knew that the final balance numbers for Account 364 were incorrect as listed on this form, correct?

A. I believe so, yes.

Q. You see that on -- well, I would ask you to compare POD-01-004, the quantity column that appears just before the -- the quantity under balance to the quantity under balance for 03-022. Do you see that those numbers are also different?

A. I do.

Q. What's the reason for that difference?

A. The reason for the difference is in Power Plant when you run for a quantity, you have to -- if you want a grand total quantity, there is a feature in Power Plant where you have to turn on the zero-based records that may have a quantity.

At the time they ran this original report they did not have that turned on. As I worked this issue backwards turning on all activity it was discovered that had not been switched on.

Q. Okay. Did that also reflect the -- does that also change the quantity numbers for the additions?

A. It could have an impact on them, yes.

Q. Would you look at the -- compare the additions column for quantity on 01-004 to the additions column quantity on 03-022. Do you see any differences?

A. No, I do not.

Q. Can you explain that to me, please, for me?

A. When they ran the additions, they conceivably had that switch turned on.

Q. Do you know whether they did?

necessarily the beginning, but toward the end, you indicated that these quantity amounts would be the number of poles -- the actual number of poles included in Account 364 that have been classified to Account 101 to GL 101 as well as the number of times that projects have been costed out for GL 106?

A. Correct.

Q. Okay. It doesn't represent the number of poles total in Account 364 when you include both GL 101 and GL 106?

A. Correct.

Q. Okay. And when investments are made in Account 364, they are first placed in GL 107 as construction work in progress, right?

A. Correct.

Q. And then when they are placed in service, they're transferred to GL 106, correct?

A. Correct.

Q. And that's completed construction not classified?

A. Correct.

Q. And then later they're classified and placed in Account 101, right?

A. Correct.

start, at the accounting level or GIS level, field process?

Q. Well, why don't you, first of all, go through the accounting process and then the GIS field process.

MS. SPILLER: I'm going to just note my objection to the extent this is beyond the scope of this deposition. Go ahead, Jim.

A. The accounting process I believe as we've covered starts with the initiation of a project, a work order. Charges go into those work orders during the construction period that's relative to the 107 accounting. The project is then placed in service. Upon placing the project the work order in service it has transitioned those charges to General Ledger 106.

At that time that enters into the continuing property record. The dollars are entered. There is an accounting quantity as we've already discussed. At such time during the process from GIS Small World we will receive the inventory as we've discussed also upon via poles conductor as an example used in the field on that project. And that will become the bases for 101.

Q. Okay. Now --

forward that specifically show the costs of the installation of poles for a project as opposed to other activities?

MS. SPILLER: Again, note my objection. Go ahead.

A. We do not account for charges as they come in by utility account.

Q. So who determines how to allocate between the different accounts in a project with respect to the costs that relate to different accounts?

A. The quantity of poles received we use a standard -- a standard price of what a pole -- or a standard factor of what a pole would be. We take the quantity of the property units received times the standards in the Power Plant system, and that creates the allocation bases.

Q. Okay. And this is done in the classification process?

A. That is cor- -- in the unitization process, yes.

Q. Okay. So there is a standard factor based on the height of a pole or the length of a pole?

A. Yes.

Q. And are these standard factors reduced to

writing?

A. Excuse me?

Q. Are they reduced to writing?

A. Could you define writing?

Q. Yes. The standard factor that we're talking about -- let's just be sure we -- I understand what you mean -- there is some estimation process that Duke has for what it cost to install a certain size and type of pole --

A. Correct.

Q. -- right? Is that the JET system?

A. That is -- the JET system is a job estimating tool.

Q. And is that what we're talking about here?

A. No, it is not.

Q. So this is a different tool?

A. This is the Power Plant system.

Q. Okay. And so if you were to inquire of the Power Plant system, you could tell me what the standard factor was for different size poles that are used at a particular time by the Power Plant system?

A. Correct.

Q. And you could provide that for different years?

Please note that page 47, line 6 through page 115, line 15 of the January 30, 2009 Deposition of James Dean relates to Deposition Exhibits designated by Duke Energy Ohio as "Confidential Proprietary Trade Secret" and was submitted under seal on February 23, 2009 in Case No. 08-709-EL-AIR, et al

Attachment 8
Excerpts of Deposition of James Dean of December 15, 2008

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	) Case No. 08-709-EL-AIR)
In the Matter of the Application of Duke Energy Ohio, Inc. for a Tariff Approval.	) Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	) Case No. 08-711-EL-AAM)
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	) Case No. 06-718-EL-ATA))

DEPOSITION OF: JAMES DEAN

December 15, 2008

9:00 a.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

and their loadings that go in to the amount numbers there?

A No.

Q So all of the amount items are amounts that should be included and are properly included in Account 364?

A The amounts in 364, there has been discovery made on the 2007 dollar amount that an adjustment is in progress to reduce that.

Q So the amount for 2007, the $52 million amount, does include items other than pole-related items; is that right?

A It is an overestimation of what the account poles should have contained.

Q And when was that determined?

A That was determined over this weekend, Friday, Saturday. There was some definition of that as I did further review of the additions. There was also some discovery that was made in June, July of 2008.

Q What discovery was made in June, July 2008?

A That certain projects that had been initiated had had an estimated account put on them

that showed poles greater than what the estimate should have been for the poles.

This is not actual. When projects are taken out, we put an estimated account, utility account distribution on them. At that time the utility account estimated allocation had put too much to the pole account.

Q How does that estimate make its way in to the actual dollars of investment that are included within Account 364?

A FERC -- as you work your system through, FERC accounting has three primary general ledgers. 107 is a general ledger used for construction of the project.

Once the project goes in to service, we move the dollars of that project to be on the CPR, the continuing property record. It is done by an estimate on that project.

That is 106 accounting, completed construction not yet fully classified. Then when we do unitize, close the project, we move it to the 101. That's when we do a field inventory of all the poles.

What was discovered is in the

accounting for the 106 that the estimate on the projects had an overestimated amount. The estimate was high for what poles were.

Q Is that because there were other items that were included with the pole investment?

A The project -- the project normally could install poles, conductor, other units of property, which should be accounted for in other FERC utility accounts.

Q So the installation of conductors, for example, would be included in a different account than 364; is that right?

A That is correct.

Q And the installation of capacitors, would that also be included in a different account?

A Other than 364, correct.

Q What's a capacitor, by the way?

A Field-wise I would -- I would be leery giving you my definition. I'm an accountant.

Q Okay. But it belongs in a different account than Account 364?

A In reading FERC, that would be correct.

Q Does Account 364 include street

A Correct.

Q And do you know in what year these -- what years these transfers were made?

MS. SPILLER: Objection. I think he's already answered that without the benefit of those documents he can't answer this question. I think the question has already been asked and answered by the witness.

MR. GILLESPIE: Well, you certainly answered it.

Q Is there any other compilation of the number of poles other than the number that is included in the continuing property records?

A Again, speaking from the property records, there is a field count of how many poles there are, yes.

Q Right. But the field -- the field count would be the number in the continuing property records plus those additions and retirements that have not yet made it in to the continuing property records?

A Correct.

Q How long does that process generally

take?

A It depends on what the size of the project is. Potentially three to six months after in servicing on specific projects.

Q Okay. So let's take a specific project where it might take -- you said six to ten months? You said three to six months? I forgot.

A Three to six months after in service.

Q Okay. So after the project is completed it might take that long?

A Correct.

Q Would the amounts included in Account 364 include that project prior to the pole count being updated?

A Yes, it would. Dollar-wise, that is correct.

Q So the dollars would be there, but the number of poles might lag by three to six months?

A That is correct.

Q Now, would the dollars be there, put in to the account before the project is even completed?

A The term "completed" -- let me change the term "completed" to the term "in service." The

term "in service" is when the equipment becomes used and useful. The pole account, 364, will increase by dollars once we're notified of the project going in service.

Q But the dollars aren't placed in Account 364 until the project is placed in service?

A That is correct.

Q Okay. Are you aware of the number of poles that were used in the rate formula that has been applied by Duke in this case?

A I am not.

Q You're not aware?

A No, I am not aware.

Q Do you know whether any surveys or inspections have been used to determine the number of poles in Account 364?

A I do not know of any.

Q Does Duke have maps of poles in their locations?

A Duke has a geographical database which is a field record. I am not an expert on all the field records, but I'm aware there is a field record.

Q And those are GIS records for the

poles?

A To the best of my knowledge, yes, not being an expert on them.

Q Do you know when and how the GIS coordinates for the Duke poles were determined?

A I do not.

Q Do you know whether as of -- well, let me strike that.

The number of poles that has been used by Duke in its formula is 248,901. Do you know what that number is based on?

A I am not familiar with that number, no.

Q So you don't know what it's based on? Do you know how that number relates to the quantity that is shown in Exhibit 4 for 2007 of 234,942?

A Not being aware of the 248, I wouldn't be able to qualify an answer to that.

Q Okay. Do you know whether there are any adjustments being made to any of the other amounts shown in the columns on POD-01-004 in Exhibit 4?

A Specific by year?

Q Yes.

discussion with Mr. Council about this proceeding here?

A It was discussing sitting in for him to cover this, and what some of the POD's were that we've covered here.

Q You talked about which POD's had been supplied to us, or you talked specifically about the various documents produced?

A It was covering the POD's that we had jointly worked up, knowing that those were in the document.

Q What do you mean you had jointly worked up?

A Some of the POD's I had worked with Carl to help submit some of the answers to; some of them, I had not.

Q And by POD what do you mean?

A Production of document.

Q So he was involved in the document production, Mr. Council?

A I just started getting in to this. I'm not quite sure who all was actually involved in it. I know Carl is my director. Yes.

Q So you report to Mr. Council?

Please note that page 52, line 11 through page 98, line 9 of the December 15, 2008 Deposition of James Dean related to Exhibits which were designated by Duke Energy Ohio as "Confidential Proprietary Trade Secret" and was submitted under seal on February 23, 2009 in Case No. 08-709-EL-AIR, et al

Attachment 9
Excerpts of Duke's Responses to OCTA
Discovery Requests and Staff Data Requests

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Third Set Interrogatories
Date Received: December 20, 2008

OCTA-INT-03-031

REQUEST:

Number of Distribution Poles in Account 364

The number of distribution poles in Account 364 is another key driver of the pole attachment rate as it is the denominator for the average investment per pole. See the formula in Attachment DLS-2. In the formula, Duke uses the number 248,901 as the number of poles in Account 364. In the summary of the continuing property records initially provided to OCTA, as a substitute for the continuing property records requested by OCTA in POD 01-004, Duke listed the total number of poles in Account 364 as 234,942. But in his deposition Mr. Dean said that the summary was not correct and is being revised. Please respond fully to the following interrogatories addressing this issue.

How many distribution poles did Duke have in service as of December 31, 2007, that are not recorded on pages 1-63 of the CPR Ledger? Identify all back-up documentation for your answer.

RESPONSE:

The Continuing Property Records does not have a count of poles in service that are recorded on pages 1-63 of the CPR ledger. Ledger entries made for in service accounting recorded in GL 106 do not reflect a number of poles in service.

PERSON RESPONSIBLE: James Dean

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Third Set Interrogatories
Date Received: December 20, 2008

OCTA-INT-03-032

REQUEST:

Number of Distribution Poles in Account 364

The number of distribution poles in Account 364 is another key driver of the pole attachment rate as it is the denominator for the average investment per pole. See the formula in Attachment DLS-2. In the formula, Duke uses the number 248,901 as the number of poles in Account 364. In the summary of the continuing property records initially provided to OCTA, as a substitute for the continuing property records requested by OCTA in POD 01-004, Duke listed the total number of poles in Account 364 as 234,942. But in his deposition Mr. Dean said that the summary was not correct and is being revised. Please respond fully to the following interrogatories addressing this issue.

Reference pages 87 and 88 of Duke's CPR Ledger: For each of the poles on these pages that is listed as replacing a distribution pole, please indicate whether the poles that were added are recorded on some other page(s) of the CPR Ledger. If so, identify the page(s) and identify the back-up documentation demonstrating that they were so recorded.

RESPONSE:

Objection. This interrogatory subjects Duke Energy Ohio to duplicative discovery requests. This information should have been solicited from James Dean in his prior deposition. Without waiving said objection, the pages selected are for GL 106, Completed Construction not Classified, and only will appear on these pages. The 'accounting' quantity associated to these entries does not represent a quantity of poles added.

PERSON RESPONSIBLE: James Dean

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Production of Documents
Date Received: October 24, 2008

OCTA-POD-01-004

REQUEST:

Please provide a copy of all documents that relate to the number of Distribution Poles owned by Duke by year since 2000. (Please include all continuing property records of Distribution Poles by year, all summaries and counts of poles, and all summaries and counts of poles added, retired or subtracted.)

RESPONSE:

Objection. This document request is overly broad and unduly burdensome given the time period pursuant to which it is to be answered and its reference to "all" documents relating to pole ownership. Furthermore, this document request seeks to elicit information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, and with reference to a more limited and thus reasonable time frame, see Attachment OCTA-POD-01-004.

PERSON RESPONSIBLE: N/A

Summary of CPR - adds and retires for account 364 for the years 2000 through 2007

	Additions		Retirements		Balance	
Year	Quantity	Amount	Quantity	Amount	Quantity	Amount
2007	1,234	$52,358,212.53	(2,704)	$ (2,158,762.76)	234,942	$ 262,635,549.12
2006	1,148	$10,104,163.59	(1,987)	$ (1,368,081.67)	236,412	$ 212,436,099.35
2005	1,556	$17,792,895.45	(2,820)	$ (2,428,589.12)	237,251	$ 203,700,017.43
2004	1,283	$8,827,376.00	(2,504)	$ (1,814,825.48)	238,515	$ 188,335,711.10
2003	836	$8,816,259.07	(2,160)	$ (1,564,816.01)	239,736	$ 181,323,180.58
2002	1,690	$6,075,015.45	(700)	$ (473,275.31)	241,060	$ 174,071,716.52
2001	4,990	$2,861,818.62	(2,277)	$ (1,583,114.44)	240,070	$ 168,469,976.38
2000	1,629	$13,298,927.16	(335)	$ (252,072.20)	237,357	$ 167,191,272.20

Case No. 08-709-EL-AIR
Attach. OCTA-POD-01-004
Page 1 of 1

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Third Set Interrogatories
Date Received: December 20, 2008

OCTA-INT-03-022

REQUEST:

Investment in Account 364

The average investment in the distribution poles in Account 364 is the fundamental element in the pole attachment formula used by the PUCO. One of the key drivers of that average investment is the embedded investment in Account 364. At his deposition on December 15, Mr. Dean indicated that the summary of Duke's continuing property records for Account 364, provided by Duke to the OCTA in response to OCTA request for production of Duke's continuing property records and contained in POD No. 01-004, was incorrect and is being revised by Duke. Also at his deposition, Mr. Dean indicated that Duke is undertaking a review of the assets added to Account 364 for 2007. Please respond fully to the following interrogatories addressing these issues.

Please provide an updated and revised summary of Duke's continuing property records for Account 364 that was provided by Duke in response to POD 01-004. In addition to years 2000-2007, please have the summary cover the entire period 1993-2007.

RESPONSE:

Objection. The unreasonable scope of this interrogatory renders it overly broad and not likely to lead to the discovery of admissible evidence. This interrogatory, as written, further mistakenly implies that the summary, in its entirety, is incorrect. To the extent this interrogatory misinterprets the prior deposition testimony of Mr. Dean, it is objectionable. Without waiving said objection and to the extent discoverable, Attachment OCTA-INT-03-022 contains the revised data for the response to POD 01-004 with the addition of the data requested in OCTA-POD-02-014.

PERSON RESPONSIBLE: James Dean

Summary of CPR - adds and retires for account 364 for the years 1993 through 2007

Year	Additions Quantity	Additions Amount	Retirements Quantity	Retirements Amount	Transfers Quantity	Transfers Amount	Balance Quantity	Balance Amount
2007	1,234	$ 52,358,212.53	(2,704)	$ (2,158,782.76)			235,228	$ 284,535,121.07
2006	1,148	$ 10,104,163.59	(1,987)	$ (1,368,081.67)			236,698	$ 234,335,671.30
2005	1,556	$ 17,792,895.45	(2,820)	$ (2,428,589.12)	(7)	$ (13,143.80)	237,537	$ 225,599,589.38
2004	1,283	$ 8,828,190.00	(2,504)	$ (1,814,825.48)	(2)	$ (5,644.06)	238,808	$ 210,248,426.85
2003	836	$ 9,027,650.03	(2,160)	$ (1,564,815.01)	3495	$ 3,219,162.02	240,031	$ 203,240,706.39
2002	1,690	$ 6,075,015.45	(700)	$ (473,275.31)	(30)	$ (91,280.93)	237,880	$ 192,558,709.35
2001	4,990	$ 2,861,818.62	(2,277)	$ (1,583,114.44)	7	$ (15,440.91)	236,900	$ 187,048,250.14
2000	1,629	$ 13,298,658.00	(335)	$ (252,072.20)	1	$ 932.34	234,180	$ 185,784,986.87
1999	5,489	$ 9,477,146.00	(2,394)	$ (1,454,693.14)	N/A	$ (70,757.84)	232,885	$ 172,737,468.73
1998	1,551	$ 8,205,807.00	(2,607)	$ (1,433,571.98)	N/A	$ 8,551.81	229,790	$ 164,785,773.71
1997	2,358	$ 8,683,276.00	(1,589)	$ (658,032.65)	N/A	$ (38,814.33)	230,846	$ 158,004,986.88
1996	2,337	$ 7,539,958.00	(1,939)	$ (917,331.36)	N/A	$ 25,462.12	230,077	$ 150,018,557.86
1995	4,499	$ 9,192,877.00	(3,198)	$ (1,484,715.40)	N/A	$ (41,352.26)	229,679	$ 143,370,469.10
1994	5,688	$ 7,107,632.00	(4,000)	$ (1,449,775.90)	N/A	$ (131,036.47)	228,378	$ 135,703,659.76
1993	3,800	$ 10,972,737.00	(3,047)	$ (1,104,422.45)	N/A	$ 193.73	226,690	$ 130,176,840.13

Note:
2003 The additions for 2003 contain a correcting adjustment for the unitzation for 24 projects totally $212,065,96. This was required to correct for a processing error on the projects. The additions for 2003 contains a FERC adjustment for (675.00).
2004 The additions for 2004 contain an adjustment reported in FERC for $814.
2000 The additions for 2000 contain an adjustment reported in FERC additions for $269.39.
N/A Not Available

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Fiftieth Set Staff Data Requests
Date Received: December 12, 2008

STAFF-DR-50-001

REQUEST:

Please provide the Staff with the following data:

Please provide the corrected balances to Accounts 364 and other affected accounts, as reported in the company's 2007 FERC Form 1. Provide an explanation as to the error in distributing dollars to the proper accounts.

RESPONSE:

Below are the revised accounts balances as of 12-31-07 used in the calculation of the pole attachment rate:

	Account 364	Account 365	Account 369
Original Cost	$284,535,121	$283,463,254	$49,635,936
Adjustment	-65,638,734	+11,756,905	+2,750,129
Adjusted Original Cost	218,896,387	295,220,159	52,386,065
Accumulated Depr	100,036,816	89,824,712	34,674,167
Adjustment	-1,774,471	+409,254	-14,116
Adjusted Accum Depr	98,262,345	90,233,963	34,660,051
Adjusted OCD	$120,634,042	$204,986,196	$17,726,014

The corrections go back to 2001, although the 2001 – 2004 corrections are minor. There were two errors that caused these problems. First, in April 2005, the Company implemented a new accounting system. A number of blanket work orders were established at that time for Distribution projects and they were coded to go to account 364. When these were classified to account 106, they were not allocated to several distribution accounts as they should have been, but were allocated only to account 364. Second, amounts on blanket work orders must be transferred to a specific work order to establish a vintage year for the additions. In December 2006, several specific work orders were created to receive amounts from the Distribution blanket work orders that were in service (account 106.) The new specific work orders were erroneously coded in CWIP (account 107) rather than in service. This was discovered and corrected in January 2007, but as a result, the additions became 2007 additions and 2006 additions were understated.

PERSON RESPONSIBLE: Donald Storck

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Fiftieth Set Staff Data Requests
Date Received: December 12, 2008

STAFF-DR-50-001Supplemental

REQUEST:

Please provide the Staff with the following data:

Please provide the corrected balances to Accounts 364 and other affected accounts, as reported in the company's 2007 FERC Form 1. Provide an explanation as to the error in distributing dollars to the proper accounts.

RESPONSE:

Below are the revised accounts balances as of 12-31-07 used in the calculation of the pole attachment rate:

	Account 364	Account 365	Account 369
Original Cost	$284,535,121	$283,463,254	$49,635,936
Adjustment	- 61,410,077	+ 9,434,658	+ 2,750,129
Adjusted Original Cost	223,125,044	292,897,912	52,386,065
Accumulated Depreciation	100,036,816	89,824,712	34,674,167
Adjustment	- 1,942,323	+ 383,353	+ 5,423
Adjusted Accumulated Depreciation	98,094,493	90,208,065	34,679,590
Adjusted Original Cost Depreciated	$125,030,551	$202,689,847	$17,706,475

The corrections go back to 2001, although the 2001 – 2004 corrections are minor. There were two errors that caused these problems. First, in April 2005, the Company implemented a new accounting system. A number of blanket work orders were established at that time for Distribution projects and they were coded to go to account 364. When these were classified to account 106, they were not allocated to several distribution accounts as they should have been, but were allocated only to account 364. Second, amounts on blanket work orders must be transferred to a specific work order to establish a vintage year for the additions. In December 2006, several specific work orders were created to receive amounts from the Distribution blanket work orders that were in service (account 106.) The new specific work orders were erroneously coded in CWIP (account 107) rather than in service. This was discovered and corrected in January 2007, but as a result, the additions became 2007 additions and 2006 additions were understated.

PERSON RESPONSIBLE: Donald Storck

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Second Set Interrogatories
Date Received: December 4, 2008

OCTA-INT-02-015

REQUEST:

Provide a summary of CPR – adds and retires for account 364 for the years 1993 through 1999 in the same form as the summary provided by Duke as Attach. OCTA-POD-01-004.

RESPONSE:

See Attachment OCTA-INT-02-015.

PERSON RESPONSIBLE: James E. Dean

Summary of CPR - adds and retires for account 364 for the years 1993 through 1999

Year	Additions Quantity	Additions Amount	Retirements Quantity	Retirements Amount	Transfers Amount	Balance Quantity	Balance Amount
1999	5,489	$ 17,008,998.27	(2,394)	$ (1,454,693.14)	$ (70,757.84)	234,942	$ 167,558,951.45
1998	1,551	$ 3,165,776.65	(2,607)	$ (1,433,571.98)	$ 8,551.81	231,847	$ 152,175,404.16
1997	2,358	$ 5,906,962.00	(1,589)	$ (658,032.65)	$ (38,814.33)	232,903	$ 150,434,647.78
1996	2,337	$ 5,217,151.14	(1,939)	$ (917,331.36)	$ 25,462.12	232,134	$ 145,224,532.76
1995	4,499	$ 10,188,541.77	(3,198)	$ (1,464,715.40)	$ (41,352.26)	231,736	$ 140,899,250.86
1994	5,688	$ 11,721,476.89	(4,000)	$ (1,449,775.90)	$ (131,036.47)	230,435	$ 132,236,776.75
1993	3,800	$ 7,283,355.56	(3,047)	$ (1,104,422.46)	$ 193.73	228,747	$ 122,098,112.23

Note: The implementation of the new capital accounting system, Power Plant, occurred 1st qtr 2000. Data was loaded based on 12/1999. Th
CPR was loaded for the first time by FERC utility account for General Ledger 106, Completed Construction not Classified,
during the conversion of data from 12/31/1999 to 1/1/2000. The amount loaded was $6,078,512.05 and a miscellaneous adjustme

Case No. 08-709-EL-AIR
Attach. OCTA-INT-02-015
Page 1 of 1

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Third Set Interrogatories
Date Received: December 20, 2008

OCTA-INT-03-023

REQUEST:

Investment in Account 364

The average investment in the distribution poles in Account 364 is the fundamental element in the pole attachment formula used by the PUCO. One of the key drivers of that average investment is the embedded investment in Account 364. At his deposition on December 15, Mr. Dean indicated that the summary of Duke's continuing property records for Account 364, provided by Duke to the OCTA in response to OCTA request for production of Duke's continuing property records and contained in POD No. 01-004, was incorrect and is being revised by Duke. Also at his deposition, Mr. Dean indicated that Duke is undertaking a review of the assets added to Account 364 for 2007. Please respond fully to the following interrogatories addressing these issues.

Please identify by work order number and page of the CPR Ledger Detailed Asset Report (produced by Duke to OCTA on December 11, 2008 and marked for identification at Mr. Dean's deposition as OCTA Ex. 14) (hereinafter "CPR Ledger") all entries to the Asset Report which have been reviewed by Duke in connection with this case, explain what adjustments, if any, Duke proposes to make to Account 364 as a result of that review, and identify all documents related to each such work order reviewed.

RESPONSE:

Objection. This interrogatory misstates the prior deposition testimony of Mr. Dean by inferring that the summary, in its entirety, is incorrect. Without waiving said objection and to the extent discoverable, Duke has reviewed the Continuing Property Record and has decreased the Continuing Property Record balance for Account 364 by $61,410,077. The review focused on the GL 106, Completed Construction not Classified work order balance and has provided a 96% review of the GL 106 balance as of the November 2008 balance.

Provided in Attachment OCTA-INT-03-023 is a list of all work orders reviewed and the adjustment made to Account 364 by work order as of the 2007 CPR. These selected work orders were reviewed by the power delivery group and new allocation estimates were provided if necessary.

PERSON RESPONSIBLE: James Dean

List of Work Orders Reviewed
for Account 3640 GL 106

WORK ORDER	Adjustment Amount
20009	
20011	
20016	
20524	
20642	
24949	
25212	
25472	
27033	
32602	
32679	
A1307	-63,191
A1538	-10,375
A1539	-35,342
A3086	-143,117
A3251	-63,683
A3894	
A4208	-23,270
A4310	-66,350
A4685	
A6627	-13,486
A6966	
A6977	
A7881	
A8537	-57,757
A8753	
A8869	
A9119	
A9617	
A9895	
A9896	
B1184	
B1396	
B1970	
B2015	
B2263	
B2449	
B2607	
B2753	10,743
B2918	-91,446
B2919	-66,446
B2946	11,395
B3067	
B3132	
B3582	-45,726
B3784	
B4461	-312,485
B4950	

B6248	
B6408	
B7683	
B7935	
B8376	
B8714	
B9124	
C2258	11,577
C2547	
C4096	
C4916	
C4975	
C5064	
C5230	
C5343	
C6975	
C7344	
C7421	
C7513	
C7637	
C7904	
C8637	
C8732	
C8907	
C8919	
C8985	-334,946
C8986	-1,447,618
C9011	-374,292
C9012	-140,952
C9014	-70,925
C9016	-114,662
C9017	-5,177,700
C9018	-3,973,886
C9019	-6,275,252
C9020	-303,906
C9022	-287,379
C9023	-462,923
C9026	-609,673
C9027	-498,122
C9028	-470,762
C9029	-894,372
C9032	-463,447
C9055	
C9305	
C9600	
D1227	
D1288	
D1489	
D1635	
D2302	
D2475	
D2707	

D2728	
ZA001	-160,489
ZA002	-11,768
ZA004	-24,778
ZG011	769,586
ZH001	107,275
ZH002	-113,802
ZH004	70,456
ZK011	-2,293,441
ZL001	-1,019,835
ZL002	-670,564
ZL004	-1,058,629
ZN001	-2,017,939
ZN002	-9,001,496
ZN004	-14,532,217
ZR001	-2,538,843
ZR002	-3,090,228
ZR004	-112,838
ZS011	-876,136
ZU001	-1,602,937
ZU002	-1,303,033
ZU004	931,454
Total Adjustment	-61,410,077

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
GROSS ADDITIONS, RETIREMENTS & TRANSFERS
From October 1, 2004 to March 31, 2008

Distribution Plant

Data: X Actual __ Estimated
Type of Filing: X Original __ Updated __ Revised
Work Papers Reference No(s).:

WPB-2.3b
Witness Responsible:
C. J. Council
01/23/09

Company Acct. No.		Beginning Balance	Additions	Retirements	Transfers/Reclassifications Amount	Explanation of Transfer	Other Accts. Involved	Ending Balance
		$	$	$	$			$
3622		72,307,844.76						
	10/1/04 - 12/31/04		1,715,331.52	73,606.56	0.00			73,949,369.72
	Year 2005		4,797,822.93	954,584.34	(32,116.36)			77,760,491.96
	Year 2006		4,856,054.05	342,596.48	126,316.36			82,399,275.88
	Year 2007		7,243,073.46	469,150.54	4,219.68			89,177,418.38
	1/1/08-3/31/08		849,464.07	82,984.65	0.00			89,943,897.80
	Total		19,461,756.03	1,923,122.57	97,419.68			89,943,897.80
3635		50,684.13						
	10/1/04-12/31/04		89,571.31	0.00	0.00			140,255.44
	Year 2005		655,022.44	0.00	0.00			795,277.88
	Year 2006		988,188.36	0.00	0.00			1,783,466.24
	Year 2007		802,433.52	0.00	0.00			2,585,899.76
	1/1/08-3/31/08		607,064.04	0.00	0.00			3,192,963.80
	Total		3,142,279.67	0.00	0.00			3,192,963.80
3640		209,672,785.67	(569,627.00)					
	10/1/04 - 12/31/04		807,313.73	678,439.39	(2,149.16)			209,329,983.85
	Year 2005		3,148,874.45	2,428,589.12	(13,143.80)			210,037,125.36
	Year 2006		8,316,696.59	1,368,081.67	0.00			216,985,739.30
	Year 2007		8,298,067.53	2,158,762.76	0.00			223,125,044.07
	1/1/08-3/31/08		2,599,386.00	397,937.21	1,144.65			225,327,637.51
	Total		22,600,810.30	6,931,810.15	(14,148.31)			225,327,637.51
3650		263,656,314.82	327,794.00					
	10/1/04 - 12/31/04		3,727,446.92	882,389.74	715.27			267,029,901.27
	Year 2005		8,800,974.97	2,926,286.94	(10,146.05)			272,894,444.25
	Year 2006		10,886,826.76	2,046,871.36	(1,261.55)			281,733,138.08
	Year 2007		15,165,077.34	4,000,303.84	0.00			292,897,911.58
	1/1/08-3/31/08		2,525,012.26	643,033.70	0.00			294,779,890.14
	Total		41,433,132.25	10,298,864.60	(10,692.33)			294,779,890.14

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
GROSS ADDITIONS, RETIREMENTS & TRANSFERS
From October 1, 2004 to March 31, 2008

Distribution Plant

Data: X Actual __ Estimated
Type of Filing: X Original __ Updated __ Revised
Work Papers Reference No(s).:

WPB-2.3c
Witness Responsible:
C. J. Council
01/23/09

Company Acct. No.		Beginning Balance	Additions	Retirements	Transfers/Reclassifications Amount	Explanation of Transfer	Other Accts. Involved	Ending Balance
		$	$	$	$			$
3660		90,417,298.24						
	10/1/04 - 12/31/04		1,555,083.48	9,342.95	0.00			91,963,048.77
	Year 2005		1,842,666.41	60,480.53	(514.47)			93,744,720.18
	Year 2006		1,204,973.78	35,307.59	(441.68)			94,913,944.69
	Year 2007		2,359,166.03	85,871.94	2,329.43			97,189,588.21
	1/1/08-3/31/08		428,860.45	44,782.50	0.00			97,573,686.16
	Total		7,390,800.15	235,785.51	1,373.28			97,573,686.16
3670		198,705,509.98	89,769.00					
	10/1/04 - 12/31/04		2,732,390.28	364,713.12	(33,269.85)			201,129,606.29
	Year 2005		21,670,960.52	1,250,554.90	(54,354.67)			221,495,557.24
	Year 2006		26,202,734.93	511,639.23	4,317.19			247,190,771.13
	Year 2007		21,042,008.74	1,571,060.41	0.00			266,661,711.46
	1/1/08-3/31/08		5,271,348.14	136,332.06	0.00			271,796,727.54
	Total		77,009,043.61	3,834,498.72	(83,327.33)			271,796,727.54
3680		286,608,192.77	31,338.00					
	10/1/04 - 12/31/04		4,380,945.95	3,197,920.22	(1,728,032.38)			286,094,524.12
	Year 2005		10,134,083.84	2,803,998.12	(1,536,258.51)			291,888,351.33
	Year 2006		9,068,020.39	3,413,530.71	(447,929.85)			297,092,911.15
	Year 2007		13,692,371.21	4,032,308.70	(76,079.82)			306,676,893.84
	1/1/08-3/31/08		4,253,376.06	305,512.66	0.00			310,624,759.26
	Total		41,558,137.46	13,753,270.41	(3,788,300.56)			310,624,759.26
3682		4,716,208.36						
	10/1/04 - 12/31/04		(72,502.18)	21,900.00	0.00			4,621,806.18
	Year 2005		92,650.09	0.00	0.00			4,714,456.27
	Year 2006		0.00	0.00	0.00			4,714,456.27
	Year 2007		0.00	0.00	(45,262.82)			4,669,193.45
	1/1/08-3/31/08		0.00	0.00	0.00			4,669,193.45
	Total		20,147.91	21,900.00	(45,262.82)			4,669,193.45

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
ACCUMULATED DEPRECIATION AND AMORTIZATION
AS OF MARCH 31, 2008

DISTRIBUTION PLANT

DATA: "X" ACTUAL ESTIMATED
TYPE OF FILING: "X" ORIGINAL UPDATED REVISED
WORK PAPER REFERENCE NO(S).:

SCHEDULE B-3
PAGE 2 OF 4
WITNESS RESPONSIBLE:
C. J. COUNCIL

LINE NO.	F.E.R.C. ACCT. NO.	COMPANY ACCT. NO.	ACCOUNT TITLE	TOTAL COMPANY PLANT INVESTMENT	TOTAL COMPANY	ADJUSTMENTS	ADJUSTED TOTAL COMPANY	ALLOCATION %	ALLOCATED JURISDICTION
				$	$				$
1	360	3600	Land and Land Rights	7,357,843	0		0	100.000%	0
2	360	3601	Rights of Way	26,615,889	1,091,710		1,091,710	100.000%	1,091,710
3	361	3610	Structures and Improvements	6,549,824	3,573,903		3,573,903	100.000%	3,573,903
4	362	3620	Station Equipment	141,741,439	57,816,648		57,816,648	100.000%	57,816,648
5	362	3622	Major Equipment	89,943,898	30,247,249		30,247,249	100.000%	30,247,249
6	363	3635	Dist Station Equip Elec	3,192,964	281,694		281,694	100.000%	281,694
7	364	3640	Poles, Towers & Fixtures	225,327,638	99,069,463		99,069,463	100.000%	99,069,463
8	365	3650	Overhead Conductors and Devices	294,779,890	91,548,320		91,548,320	100.000%	91,548,320
9	366	3660	Underground Conduit	97,573,685	29,403,258		29,403,258	100.000%	29,403,258
10	367	3670	Underground Conductors and Devices	271,796,728	60,056,806		60,056,806	100.000%	60,056,806
11	368	3680	Line Transformers	310,624,759	127,171,065		127,171,065	100.000%	127,171,065
12	368	3682	Customer Transformer Installations	4,689,193	2,124,839		2,124,839	100.000%	2,124,839
13	369	3691	Services - Underground	8,324,191	1,699,599		1,699,599	100.000%	1,699,599
14	369	3692	Services - Overhead	44,445,248	33,257,476		33,257,476	100.000%	33,257,476
15	370	3700	Meters	54,161,209	19,092,951		19,092,951	100.000%	19,092,951
16	370	3701	Leased Meters	23,527,697	715,997		715,997	100.000%	715,997
17	371	3710	Installations on Customers' Premises	32,968	0		0	100.000%	0
18	372	3720	Leased Property on Customers' Premises	102,503	(92,485)		(92,485)	100.000%	(92,485)
19	373	3731	Street Lighting - Overhead	7,839,582	9,042,149		9,042,149	100.000%	9,042,149
20	373	3732	Street Lighting - Boulevard	19,092,234	4,773,882		4,773,882	100.000%	4,773,882
21	373	3733	Light Security OL POL Flood	6,917,165	4,222,101		4,222,101	100.000%	4,222,101
22		108	Retirement Work in Progress		(15,890,072)		(15,890,072)	100.000%	(15,890,072)
23			Total Electric Distribution Plant	1,644,616,547	559,206,552	0	559,206,552		559,206,563

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
Depreciation Reserve Accruals, Retirements and Transfers
From October 1, 2004 to March 31, 2008

Distribution Plant

Data: X Actual __ Estimated
Type of Filing: X Original __ Updated __ Revised
Work Papers Reference No(s).:

WPB-3.3b
Witness Responsible:
C. J. Council
01/23/09

Company Acct. No.		Beginning Balance	Accrual	Salvage	Retirements	Cost of Removal	Transfers/Reclassifications Amount	Explanation of Transfer	Other Accts Involved	Ending Balance
		$	$	$	$	$	$			$
3622		26,667,162.86								
	10/1/04 - 12/31/04		379,605.80	0.00	73,806.56	42,083.11	0.00			26,930,778.48
	Year 2005		1,584,061.77	0.00	954,584.34	132,306.54	172,397.60			27,600,346.97
	Year 2006		1,525,983.72	0.00	342,596.48	65,102.41	134,472.96			28,853,104.76
	Year 2007		1,644,427.92	0.00	469,150.54	69,093.91	(23,453.96)			29,915,634.29
	1/1/08-3/31/08		427,608.89	0.00	82,984.65	13,206.84	0.00			30,247,249.69
	Total		5,561,588.10	0.00	1,923,122.57	341,794.81	283,416.62			30,247,249.69
3635		0.00								
	10/1/04 - 12/31/04		315.04	0.00	0.00	0.00	0.00			315.04
	Year 2005		6,438.59	0.00	0.00	0.00	0.00			6,753.63
	Year 2006		77,066.65	0.00	0.00	0.00	0.00			83,820.28
	Year 2007		145,714.82	0.00	0.00	0.00	0.00			229,535.10
	1/1/08-3/31/08		52,159.06	0.00	0.00	0.00	0.00			281,694.16
	Total		281,694.16	0.00	0.00	0.00	0.00			281,694.16
3640		87,385,759.73	(18,639.00)							
	10/1/04 - 12/31/04		1,387,397.13	0.00	578,439.39	18,373.87	(245.03)			88,157,459.57
	Year 2005		5,601,622.65	934.19	2,426,589.12	181,320.28	(197.80)			91,149,909.41
	Year 2006		5,363,522.52	24,573.00	1,368,081.67	26,602.96	0.00			95,143,320.30
	Year 2007		5,334,618.89	0.00	2,158,762.76	224,683.93	0.00			98,094,492.50
	1/1/08-3/31/08		1,375,876.03	0.00	397,937.21	3,030.18	62.20			99,069,463.34
	Total		19,044,398.42	25,507.19	6,931,810.15	454,011.22	(380.63)			99,069,463.34
3650		79,368,671.32	12,942.00							
	10/1/04 - 12/31/04		1,488,687.83	0.00	682,369.74	136,674.62	8.28			80,051,285.07
	Year 2005		6,044,560.40	19,163.21	2,926,285.94	779,562.24	(66.04)			82,409,074.46
	Year 2006		7,518,748.94	15,092.40	2,046,871.38	467,035.20	(9.16)			87,429,000.06
	Year 2007		7,780,811.62	0.00	4,000,303.84	1,001,442.51	0.00			90,208,065.33
	1/1/08-3/31/08		1,990,139.20	0.00	643,033.70	6,650.02	0.00			91,548,320.81
	Total		24,835,889.99	34,255.61	10,298,864.60	2,391,564.59	(66.92)			91,548,320.81

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
Depreciation Reserve Accruals, Retirements and Transfers
From October 1, 2004 to March 31, 2008

Distribution Plant

Data: X Actual __ Estimated
Type of Filing: X Original __ Updated __ Revised
Work Papers Reference No(s).:

WPB-3.3c
Witness Responsible:
C. J. Council
01/23/09

Company Acct. No.		Beginning Balance	Accrual	Salvage	Retirements	Cost of Removal	Transfers/Reclassifications Amount	Explanation of Transfer	Other Accts Involved	Ending Balance
		$	$	$	$	$	$			$
3660		23,256,446.64								
	10/1/04 - 12/31/04		454,391.98	0.00	9,342.95	(277.55)	0.00			23,701,773.22
	Year 2005		1,961,401.43	0.00	60,480.53	(2,918.50)	(40.99)			25,605,571.63
	Year 2006		1,739,207.88	0.00	38,307.59	32.00	(2.91)			27,309,437.01
	Year 2007		1,777,458.85	0.00	85,871.94	3,008.71	53.85			28,998,069.16
	1/1/08-3/31/08		449,972.11	0.00	44,782.50	0.00	0.00			29,403,258.77
	Total		6,382,432.25	0.00	235,785.51	(155.34)	10.05			29,403,258.77
3670		47,007,546.16	3,644.00							
	10/1/04 - 12/31/04		1,049,477.28	0.00	364,713.12	10,066.11	(271.02)			47,684,517.19
	Year 2005		4,473,697.47	29,397.02	1,250,554.90	(113,383.82)	(295.79)			51,050,084.81
	Year 2006		4,609,957.71	0.00	511,638.23	(192,845.20)	4.62			55,341,054.11
	Year 2007		5,145,087.48	0.00	1,571,060.41	57,308.41	0.00			58,857,752.77
	1/1/08-3/31/08		1,337,470.41	0.00	135,332.06	2,084.92	0.00			60,056,806.20
	Total		16,618,154.33	29,397.02	3,834,498.72	(236,769.58)	(562.19)			60,056,806.20
3680		109,222,135.55	1,384.00							
	10/1/04 - 12/31/04		2,471,939.03	140,269.77	3,197,920.22	(92,488.73)	(44,936.41)			108,685,360.45
	Year 2005		10,031,927.71	700.64	2,803,988.12	92,906.15	(269,586.89)			115,551,497.64
	Year 2006		8,756,987.99	9,480.60	3,413,530.71	13,906.00	(55,018.45)			120,834,512.07
	Year 2007		8,576,066.03	0.00	4,032,308.70	69,894.00	(22,892.91)			125,284,504.49
	1/1/08-3/31/08		2,192,640.65	0.00	305,512.66	568.46	0.00			127,171,064.22
	Total		32,028,957.61	150,451.01	13,753,270.41	84,784.88	(392,434.66)			127,171,064.22
3682		1,782,102.77								
	10/1/04 - 12/31/04		26,351.67	0.00	21,900.00	4,309.40	0.00			1,782,245.04
	Year 2005		104,685.56	0.00	0.00	0.00	0.00			1,886,930.60
	Year 2006		117,861.36	0.00	0.00	0.00	0.00			2,004,791.96
	Year 2007		116,918.46	0.00	0.00	0.00	(26,054.89)			2,095,655.53
	1/1/08-3/31/08		29,182.47	0.00	0.00	0.00	0.00			2,124,838.00
	Total		394,999.52	0.00	21,900.00	4,309.40	(26,054.89)			2,124,838.00

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Second Set Interrogatories
Date Received: December 4, 2008

OCTA-INT-02-020

REQUEST:

List the number of duct feet of conduit owned by Duke for each year from 2000-2007.

RESPONSE:

Below is the number of duct feet of distribution conduit owned by DE-Ohio for years 2000-2007.

Year	Feet
2007	14,475,063
2006	13,835,398
2005	13,264,139
2004	12,457,945
2003	11,859,779
2002	10,916,229
2001	10,736,167
2000	10,187,292

PERSON RESPONSIBLE: James E. Dean

Attachment 10
Excerpts of Deposition of Steve Adams of January 30, 2009

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)))	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.	))	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)))	Case No. 06-718-EL-ATA

DEPOSITION OF: STEVE ADAMS

January 29, 2009

1:00 p.m.

REPORTED BY:

Kristina L. Pedersen

end working with the conversion manager from the company that did the conversion.

Q. Okay. Are you aware that Duke has determined that as of the end of 2007 it had 248,901 distribution poles?

A. I was not aware of that.

Q. You were not. So you had nothing to do with the determination of that number?

A. No.

Q. Okay. Do you know how many poles Duke had in its distribution system as of the end of 2007?

A. I don't know, no.

Q. Okay. Does Duke have documentation of the number of poles that it had in the GIS system as of the year-end 2007?

A. Not to my knowledge.

Q. Okay. Is the GIS system the Small World system?

A. Yes.

Q. Okay. Can you tell me how the records of the GIS system are maintained?

A. I'm not sure exactly what you mean by that question.

Q. Okay. Tell me how the GIS system records

the number of poles.

A. Well, as jobs are designed in the field whether it's adding pole lines or gas mains or whatever the job is, that work is designed in the GIS system and eventually posted to the GIS system.

Q. Okay. Let's talk about a pole line being extended. Tell me how that design system works and how it works that the -- with the GIS system.

A. Okay. When a pole line is to be extended, we have a CPC, customer project coordinator, which is basically a field engineer -- will create a work request in Small World, the GIS system, and extend that pole line, adding poles and conductor and cutouts, whatever, and generate a construction print that goes to the field for that pole line extension to be built.

The field supervisor will mark any changes that were made during construction. You know, if they had to relocate a specific pole because of an obstruction, they'll make redline changes to the -- to the construction prints. They'll send those construction prints back into the office.

An office coordinator will look at the -- any redline changes, make those changes in the

original work request that was designed in Small World, and close out the job. At which point those poles that were added will be available in the GIS system for others to see.

Q. When is it that the system is closed out for that extension so that other people can see it; in other words, it's at that point that the poles are capable of being counted by the GIS system; does -- well, let me take a step back.

A. Okay.

Q. Does the GIS system allow poles to be counted?

A. Yes.

Q. Okay. Is it a mapping system?

A. A GIS system is a mapping system.

Q. So it has levels of maps on the system?

A. You can create maps from a GIS system.

Q. Okay.

A. So to that end, yes, it's a mapping system in that you can create maps.

Q. Okay. But the GIS system will also -- it's a data system that will allow you to determine how many poles are in it --

A. That's correct.

Attachment 11
Excerpts of Duke's
CPR Ledger Detailed Asset Report for Plant Account 364

Please note that Duke's CPR Ledger Detailed Asset Report For Plant Account 364 was designated by Duke as "Confidential Proprietary Trade Secret". This document (OCTA Deposition Exhibit 14) was submitted under seal on February 23, 2009 in Case No. 08-709-EL-AIR.

Attachment 12
Work Orders in OCTA Deposition
(OCTA Deposition Exhibits 25-27)

Please note that OCTA Deposition Exhibits 25-27 were designated by Duke as containing "Confidential Proprietary Trade Secrets". OCTA Deposition Exhibits 25-27 were submitted under seal on February 23, 2009 in Case No. 08-709-EL-AIR, et al

Attachment 13
Excerpts of Deposition of Ulrich Angleton of December 15, 2008

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	) Case No. 08-709-EL-AIR)
In the Matter of the Application of Duke Energy Ohio, Inc. for a Tariff Approval.	) Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	) Case No. 08-711-EL-AAM)
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	) Case No. 06-718-EL-ATA))

DEPOSITION OF: ULRICH ANGLETON

December 15, 2008

12:35 p.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

rental rate will be 60 bucks. And if we each own the relative correct percentages, there's no rental rate that passes?

A That's the theory on it.

Q Now, is it the latter theory that works with AT&T and Embarq, or is there a set percentage?

A The way it works with the other telephone companies, if they don't own a percentage of poles, Duke pays them for the six foot of pole that they're on.

Where Embarq attaches to Duke poles, they pay for a percentage of the poles that they're on. Generally the old agreements called for three foot of space. So they'll pay for three foot of space on all those Duke poles that are beyond the percentage.

Q Okay. And do you know what the rate is that's charged by AT&T of Duke?

A I don't at this point.

Q And do you know what the rate is that is charged by Duke to Embarq?

A It's -- I know Embarq is around $18, but I'm not sure.

any of Current's affiliates to Duke's poles?

A No.

Q Do you know of any safety inspections involving Current or Current's affiliates?

A Any time an attachment is put on a pole, the process is to do a post inspection to make sure that that attachment is in compliance.

Q Other than the post-construction inspections, are you aware of any audits or surveys of Current's facilities?

A No.

Q Are you aware of complaints having been made by cable operators about the manner in which Current or CG&E was attaching Current's facilities to Duke's poles?

A No.

Q Do phone companies have power supplies on Duke's poles?

A They have terminal boxes generally mounted on their own poles. I'm sure there are some on Duke poles, but the intent is to keep them on telephone poles.

Q To the extent that they have terminal boxes on Duke's poles, do they pay a separate rental

rate for that?

A No.

Q Do phone companies have risers on Duke's poles?

A They do.

Q Do they pay a separate, additional rate for risers?

A No.

Q Now, you said that at one time drop poles had a designation of CC?

A That was current contact.

Q And so they were not included in the poles for terms of sharing arrangements; is that right?

A As far as I know.

Q As far as you know they were not?

A Yeah. That, I really don't know for sure.

Q Has Duke conducted any kind of an audit to identify all of Duke's drop poles to which the phone companies may be attached?

A I'm not aware of it.

Q When the phone companies were attaching to drop poles under the CC system, were

Q Do you know how long this has been going on?
A I would have to estimate a number of years. I don't know.
Q You've been riding around Duke's outside plant Ohio for how many years?
A 13.
Q You weren't riding around prior to that?
A Yes, I was.
Q Looking at the plant?
A Yes. Yes.
Q You could see whether there is a drop attachment evident from riding around; isn't that true?
A Well, that's true if that's what you're looking for.
Q So you weren't necessarily looking for this before 13 years ago; is that right?
A That's right.
Q So you don't know whether cable operators were attached to Duke's drop poles prior to 13 years ago? You just didn't notice?
A Oh, I had -- yes, I noticed they were.

Q Okay. So some time prior to 13 years ago you know this has been taking place, right?

A Yes.

Q And do you think it's been evident to other people in Duke that cable companies have been attached to Duke's drop poles for a period of time?

A Yes.

Q And are you aware that cable operators have traditionally not applied to Duke before the fact to make attachments to drop poles?

A Since I'm not working in Ohio, I don't know what the application was. I would have to say they probably didn't. I don't know.

Q You weren't working in Ohio?

A No.

Q Now, are you aware of the fact that for many years cable companies in Ohio did not apply or provide notice to Duke of attaching to drop poles?

MS. WATTS: I'm going to note a continuing objection here to relevancy.

MR. GILLESPIE: Fine.

MS. WATTS: You can go ahead and answer.

Attachment 14
Excerpts of Deposition of Teresa Brierly of December 15, 2008

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for a Tariff Approval.	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

DEPOSITION OF: TERESA BRIERLY

December 15, 2008

3:05 p.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

telephone company is on an existing pole and they want to get another attachment on that pole, they may do so within the space allowed them within the agreement.

So, no, Cincinnati Bell would not notify me every time they want to put an attachment on the pole. Yes, Time Warner should.

Q Okay. Now, I'm not asking you what you believe should be done. I'm just trying to get an understanding of what the parties actually do, okay?

Let me define what I mean by a drop pole. By drop pole I mean a pole that is off the distribution line that is used to help carry a service drop to the home, okay?

A Yes.

Q Now, my question has to do with if there is a Duke drop pole that, let's say, Cincinnati Bell is not already attached to, if Cincinnati Bell wants to attach to that drop pole to provide service to the customer, do you know whether Cincinnati Bell requests permission, files an application with Duke before doing so?

A I don't know.

whether or not the complaints that Time Warner had were justified; is that right?

A I don't have any knowledge of what transpired.

Q Okay. Do you know whether unauthorized attachments have any higher percentage of safety violations than authorized attachments?

A I don't know.

Q Do you know whether the 2005 audit has identified safety violations that were created by Duke?

MS. SPILLER: Objection to the relevance.

Go ahead.

A I don't know.

Q Didn't you review certain alleged safety violations in connection with that audit?

A I reviewed violations, none that I'm aware of that were specifically identified as safety.

Q Well, you're aware that that audit contained identification of some situations that were purported to be violations of the code or of Duke's technical requirements?

A Yes.
Q And didn't you review a series of them and determine that some were not violations at all?
A Yes. Yes.
Q And didn't you also determine that there were a number that had been created by Duke?
MS. SPILLER: Object to the relevance.
Go ahead.
A I identified some at the time that I was looking at them that Duke had added additional equipment or certain things to the pole at the time, and there were a few that I determined that, yes, we added equipment.
Q That had created a safety violation, right?
A That had created a violation on the pole, yes.
Q And isn't it true that of the 26 you looked at, you determined that Duke had been responsible for creating 22?
MS. SPILLER: Objection.
Go ahead.
A Those numbers are not correct.
Q What are the correct numbers?

A I can tell you that I looked at 80. I cannot tell you of those 80 precisely how many I identified as a situation where Duke added additional equipment.

Q Isn't it true that Duke added additional equipment on about 22 of those?

A I don't know.

Q You don't?

A I don't recall the number.

Q Do you know whether Duke has corrected any of the violations that you determined that it had created?

MS. SPILLER: Again, objection; relevancy.

A I know that Duke has corrected some violations, and some of those were not caused by Duke.

Q How many has Duke corrected?

A I don't have an exact number.

Q Give me an approximate number.

MS. SPILLER: No. She's not required to guess.

MR. GILLESPIE: I'm not asking her to guess. I'm asking for an approximate

number. That's a fair question.

MS. SPILLER: I'm going to note my objection. Teri, if you --

MR. GILLESPIE: That's fine.

MS. SPILLER: -- don't know, you don't know.

MR. GILLESPIE: Well, you're telling her how to answer, and I really do object to that.

MS. SPILLER: She's not -- in this deposition she is to be deposed based upon her personal knowledge.

MR. GILLESPIE: That's right. And I've asked her for an approximate number. If she can't give one, she can't give one. But I find it very offensive for you to be telling her how to answer.

MS. SPILLER: Well, I find it somewhat offensive that you're pressing her for speculative information in the form of an approximate number.

MR. GILLESPIE: That's not speculation.

MS. SPILLER: An approximate number is

a speculative number --

MR. GILLESPIE: It is not.

MS. SPILLER: -- because she doesn't know the accurate number.

Q Can you give me an approximate number?

A I don't know.

MS. SPILLER: Note my objection.

Q Can you tell me how many of the violations that you found that Duke was responsible for creating that Duke has now corrected?

MS. SPILLER: Objection; asked and answered.

Go ahead.

A I don't have a number.

Q Do you know whether Duke has corrected any of those particular situations?

MS. SPILLER: Objection; asked and answered.

Go ahead.

A I know some violations have been corrected.

Q Those violations?

A Some violations have been corrected.

Attachment 15
Excerpts of Deposition of Donald Storck of November 21, 2008

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for a Tariff Approval.	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

DEPOSITION OF: DONALD STORCK

November 21, 2008

9:00 a.m.

REPORTED BY:

Renee Rogers, Registered Professional Reporter

Q Do you know what Duke now charges for use of its conduit?

A No, I do not.

Q Who would know that?

A It would be whoever does the billing for that. I don't know the name of the person.

Q Has Duke made any calculations regarding conduit charges?

A No, it has not.

Q Do you know whether the conduit charges that Duke currently charges have been determined based on cost?

A I don't know.

Q Turning to the application section on the next page. Do you know whether the tariff would require cable operators and other attaching parties to file a permit application before making an attachment to a drop pole?

A It says they have to make a written application.

Q Would that apply to drop poles?

A I assume so, yes.

Q Would the application have to be made before attachment, or could it be made afterwards?

A The tariff says it's not presumed to have permission to make any attachment until after the 45-day period, by either notification or a 45-day period.

Q So in order to make an attachment to a drop pole, the cable operator would have to make an application and then wait for Duke to rule on that application?

A Yes.

Q And that ruling could take less or more than 45 days?

A It can't take more than 45 days.

Q What if Duke takes longer than 45 days to respond; is there any sanction provided for in this tariff?

A Sanction to Duke?

Q Yes.

A No. There is none.

Q So if a cable operator applied to make an attachment and Duke did not respond within the 45 days, what could the cable operator do in order to get a resolution from Duke? Do you know?

A It would obviously call Duke to determine the status of the --

section entitled safety violations. This is in Exhibit Number 7. In the first sentence you see the reference to attachments that, quote, interfere with the operation of facilities of the company?

A Yes.

Q Do you see that?

A Yes, I do.

Q Can you tell me what Duke means by attachments which interfere with the operation of facilities of the company?

A It would be ones that are not placed appropriately for the operation of our company.

Q Does that mean attachments which may have been placed properly at the time but that now are in violation of -- that now would inhibit the company's ability to use a pole for a certain purpose?

A I suppose it could be interpreted that way.

Q So this could apply if the company wanted to use space that was occupied by the attacher now?

A It could.

Q It could apply where Duke has caused

the interference such as placing an additional facility on the pole after the cable attachment was made?

MS. SPILLER: I'm going to object. I don't think that's a fair interpretation.

A I suppose it could.

Q So in a situation where the cable attachment was properly made and Duke has added a transformer on top of it, which has created an NESC violation, that situation would be treated as a safety violation by the cable operator which would interfere with the operation of facilities of the company; is that right?

MS. SPILLER: I'm going to object to the form.

Go ahead.

A I'm not sure how that would be handled.

Q But the language would be subject to that interpretation, would it not?

A You could interpret the language that way, yes.

Q Would the language apply to a new requirement made by Duke imposed after the

you like to be deposed?

MS. SPILLER: Note my objection to the form of your question.

MR. GILLESPIE: All right.

A This doesn't apply to Duke. This is a tariff for the attachments of the licensees.

Q So the sanctions would not apply to Duke?

A The sanctions would not apply.

Q So it would be Duke's intention that the licensee fix all safety violations of which Duke had noticed within ten days, no matter how many such violations were noticed on a particular day?

A It is their intent to have licensees fix these within ten days.

Q So if Duke conducted an inspection and found a number of things that did not meet the standards that Duke has proposed, and notified a cable company of the situations on day one, under the tariff a cable company would be required to fix every one of them within ten days; is that right?

MS. SPILLER: Objection; asked and answered.

A That's what the tariff states.

Q Would the sanction in this section apply to telephone companies?

A The sanctions apply to people to which this tariff applies.

Q And the tariff does not apply to telephone companies, correct?

A That is correct.

Q Do you know whether there are similar sanctions in the agreements between Duke and the phone companies?

A No, I do not.

Q You've not made inquiry to determine whether or not that's true; is that right?

A That is correct.

Q Do you know whether any inspections conducted on behalf of Duke have turned up violations of the National Electrical Safety Code that had been created by Duke?

A I'm not familiar with any of the audits or inspections.

Q And you don't know whether any of those violations have been corrected; is that right?

A I would not know.

Q Would you turn to Duke's response to