ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC., COX COMMUNICATIONS GULF COAST, L.L.C., et. al. Complainants, v. GULF POWER COMPANY, Respondent.	E.B. Docket No. 04-381

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel
Chief Administrative Law Judge

GULF POWER COMPANY'S NOTICE OF FILING AND SERVICE OF EXPERT SUMMARY AND CURRICULUM VITAE

Gulf Power Company ("Gulf Power") pursuant to the December 14, 2006 Scheduling Order (as amended) gives notice of filing and service of the attached summary and curriculum vitae of Roger A. Spain, CPA, CVA.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice Of Filing And Service Of Expert Summary And Curriculum Vitae has been served upon the following by Electronic Mail and by United States Mail on this the 3rd day of March, 2006:

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OF COUNSEL

Summary Report of Roger A. Spain, CPA, CVA

INTRODUCTION

I have been engaged by the law firm of Balch and Bingham, L.L.P. to evaluate various methodologies for valuing Gulf Power Company's pole space. In performing my analysis, I reviewed documents including, but not limited to, Bates labeled documents Gulf Power 2437 through 2474, the deposition of Terry Davis, 47 U.S.C. Section 224, and the *Alabama Power Company v FCC* 11th Circuit Opinion.

QUALIFICATIONS

I am a manager with Aldridge, Borden & Company, P.C. in Montgomery, Alabama. We are a CPA firm providing a wide range of specialized services, including management consulting, strategic planning, litigation consulting, business valuation, mergers and acquisitions consulting, tax planning, compliance, auditing, and information technology consulting.

My own areas of expertise include accounting and business consulting in several industries, including the electric distribution industry. As an auditor, I have performed numerous audits of electric distribution utilities, and several other types of other utilities. I have also performed numerous consulting engagements in the utilities arena, including cost of service studies, rate analysis and design engagements, property plant and equipment analyses, and feasibility studies. Companies for whom I have performed these services have been electric providers, telephone companies, cable television and satellite dish companies, natural gas companies and retail propane companies. I also have significant experience in auditing and tax related work in the general business environment. I am a Certified Public Accountant licensed to practice in Alabama and Mississippi. I also hold the Certified Valuation Analyst designation through the National Association of Certified Valuation Analysts. The attachment to this summary contains additional biographical information.

STANDARD OF VALUE

I have been instructed by counsel to perform my analysis assuming the access and attachment to Gulf Power Company's poles by cable television companies results in a taking, and that as a result Gulf Power Company is entitled to fair market value.

NATURE OF DISTRIBUTION PLANT

This case involves the valuation of a unique asset: Gulf Power Company's pole space. Because the pole space resides on poles which are an integrated component of a large single asset (a complete electric distribution system), its value is enhanced beyond its stand alone value. As a functioning piece of the distribution system the value of pole space is not simply the allocated cost of a pole plus the cost to install it; rather the value of the space is its value in use as part of a larger distribution system.

BUSINESS ENVIRONMENT

Gulf Power Company operates within the historically regulated electric industry. Such regulation has historically protected the territory of electric distribution systems, as it was deemed to be in the public's best interest to avoid the duplication of services. By limiting the duplication of services the public expects to benefit by not having to pay for more than one distribution system.

One result of this regulated environment is that there is usually only one provider of electricity in a location, and, therefore, often only one potential provider of pole space available for attachment. This creates a limited available market for those wishing to lease pole space.

At the same time, cable television companies participate in an industry with few other cable television providers in a given marketplace. The result is a historically limited number of potential cable television pole attachers.

By having a limited available market for purchasers of pole access, a limited number of potential cable television pole attachers and considering the history of pole attachment regulation, historically transactions between Gulf Power Company and cable television companies have not been conducted in a typical open market setting.

NATURE OF THE ATTACHMENT

What is at issue is the value of the elevated corridor available to carry communications lines and not simply the value of the pole. It is not practical to think of this corridor without considering the existence and related value of the pole on which the corridor resides. Therefore, the value of the pole is an important component of the value of the corridor, but it is not the only

component or consideration. As mentioned previously, these poles are a piece of a larger electric distribution system asset. In addition to the cost of the pole and the related installation costs, there are other costs and factors affecting the value of the actual pole including the value in use element, right of way procurement, engineering, and administration.

In addition to factors affecting the value of the pole itself, there are two important elements in the value of the elevated communication corridor. The first additional element of value is the obligation to maintain electric distribution plant at or above a level expected by the public and required by regulatory bodies. This obligation to maintain poles at certain levels renders all poles as functionally new. In relation to the value of the elevated communication corridor, it is not practical to separate the obligation to maintain a pole from the value of the corridor that resides on that same pole.

Elevated corridor value is also affected by a second element. That is the fact that the risk of loss on the pole remains with the pole owner. This is especially relevant given that the pole space is expected to be available to the attacher into perpetuity. In the event of distribution plant obsolescence, destruction, or failure, the obligation and expense to replace and rebuild a pole rest with the pole owner, and not the pole attacher. Therefore, the realistic expectation that the corridor will always be available is another component of the value of the corridor.

COMPARISON TO OTHER TANGIBLE PROPERTY

I have submitted that what is being valued is a corridor of space on a series of utility poles, and that there are different elements of that corridor including the pole itself, an obligation to maintain that pole, and a retention of the risk of loss by the pole owner. I will now focus discussion on the value of the pole.

First, I have stated that I have assumed the appropriate standard of value is fair market value. The definition of fair market value in continued use is,

> "the estimated amount, expressed in terms of money, that may reasonably be expected for a property in an exchange between a willing buyer and a willing seller, with equity to both, neither under any compulsion to buy or sell, and both fully aware of all relevant facts..."[1]

[1] Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets, Second Edition, Machinery and Technical Specialties Committee of the American Society of Appraisers, Page 3.

Within traditional equipment valuation and appraisal methodologies, there are three approaches to the determination of value. They are the cost, sales comparison, and income approaches. For reasons discussed below, I will focus on the cost approach to determining fair market value in this situation.

According to the American Society of Appraisers, under the cost approach,

> "The appraiser starts with the current replacement cost new of the property being appraised and then deducts for the loss in value caused by physical deterioration, functional obsolescence, and economic obsolescence."[2]

As noted in the passage above, the replacement cost of an asset is an accepted starting point for determining the fair market value of equipment. In the event of a contemplated change in ownership of an asset, depreciation[3] becomes an important component in the determination of fair market value, and must be deducted from the replacement cost. This is necessary in order to give credit to a purchaser/lessee for the portion of an asset 'used up' by the seller/lessor.

This same cost approach to determining fair market value is also an accepted and often used methodology in determining appropriate lease rates for equipment. There are two very critical similarities between traditional fair market determination for potential sales and lease transactions; 1) the risk of loss customarily transfers to the buyer/lessee, or user of the equipment, and 2) the useful life of the equipment is finite.

Pole attachment arrangements and typical equipment sales and leases are similar in some respects. Most notably, both are based on the use of tangible property or equipment. However, there are also several important differences between a typical equipment sale or lease, and pole attachment arrangements. These include:

> 1) Term of use – under a normal sale or lease arrangement, the useful life or term of use of an asset is limited, whereas under a pole attachment arrangement the term of attachment is not foreseeably limited.

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[2] Ibid, Page 5.

[3] Further, the American Society of Appraisers defines depreciation for valuation purposes as, "the estimated loss in value of an asset, compared with a new asset; appraisal depreciation measures value inferiority that is caused by a combination of physical deterioration, functional obsolescence, and economic (or external) obsolescence."

2) Functionality – during the lease term or useful life of the asset, the asset's functionality will decrease as time passes or the asset is 'used up,' whereas under a pole attachment arrangement there is no diminution in functionality of the underlying asset.

3) Risk of loss – In a traditional lease or sale, the risk of loss and cost to replace are borne by the purchaser or lessee, whereas under a pole attachment arrangement the risk of loss and cost of replacement are held by the pole owner.

FAIR MARKET VALUE ISSUES

In assessing the fair market value of a piece of an electric distribution system's total plant, one will encounter difficulties in applying both the sales comparison approach, or market method, and the income approach.

Regarding the sales comparison approach it is important to distinguish between applying this approach to valuing electric poles and valuing the elevated communication corridor. Based on my preliminary review of Gulf Power Company's unregulated attachment rates, it could be appropriate to use the sales comparison approach, at least for purposes of evaluating corroborative information.

The primary difficulty in applying the sales comparison approach to the valuation of the actual poles, is that there is often a lack of comparable transactions involving distribution plant sales. In the event that a valuation expert did find transactions involving the purchase/sale of electric distribution plant, the individual facts and circumstances surrounding each transaction would often significantly limit the applicability of those transactions to other situations.

In trying to apply the income approach to value a piece of an electric distribution system, one would encounter difficulties in trying to determine what portion of a power company's total income or cash flows are attributable to that piece of the electric plant in question. Because of these difficulties the income approach generally becomes impractical as an approach to valuing an electric company's poles and the space on those poles.

The cost approach is generally the most appropriate method for a valuation of an in use asset.[4] Additionally, the American Society of Appraisers notes that "the cost approach is frequently used for unique types of assets for which there is no quantifiable income stream and no reliable market or sales data."[5]

Another issue regarding the value of the poles to which communications companies attach relates to the notion of cherry-picking. As a practical matter, attachers will typically attach to the most desirable, highly valued poles within a power company's territory. Where fair market value is the standard of value, this renders any method using average costs for determining the appropriate pole attachment rate artificially low. By using system averages, whether based on historical or current replacement costs, in calculating a pole attachment rate no allowance is made for the more highly valued poles to which cable television companies are attaching.

Simply stated, because pole attachers are likely to cherry pick the most attractive sections of Gulf Power's electric distribution system, overall plant valuation averages may place Gulf Power in a position of under-recovery under a fair market value standard of value

ALABAMA POWER COMPANY v. FCC OPINION

I have reviewed the *Alabama Power Company v FCC* Opinion and the "test" set forth in that opinion. In my opinion as a valuation analyst, the "another buyer waiting in the wings" portion of that test in a fair market value scenario must be a reference to the hypothetical buyer. Any interpretation requiring an actual buyer or actual buyers would be inconsistent with the established principles of the fair market value standard.

The *Alabama Power Company v FCC* test alternatively requires Gulf Power Company to show a "higher valued use with its own operations." In my opinion as a valuation analyst, this requirement is at odds with valuation principles and business practices, insofar as it disregards higher valued uses outside of the owning entity's operations. One likely reason for an entity to sell an asset is that there are others who have a higher-valued use for the asset.

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[4] John L. Gadd, Chair responsibility, The Opinion of the College on Defining Value in Use, Published in Valuation, vol. 32, no. 1, June 1989.

[5] Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets, Second Edition, Machinery and Technical Specialties Committee of the American Society of Appraisers, Page 316.

HISTORICAL COSTS ARE NOT REFLECTIVE OF FAIR MARKET VALUE

Historical costs are not intended to and generally do not represent fair market value. The fair market value of a company is rarely reflected in its historically based accounting records or financial statements. If the historically based accounting records or financial statements did agree with the fair market value of a company, or its assets, this would be merely coincidental.

GULF POWER COMPANY'S CALCULATION

I have reviewed Gulf Power Company's pole attachment fee calculation. In these calculations Gulf Power Company uses a fully embedded replacement cost as a basis for the computed rate. In a fair market value scenario, the replacement cost methodology is acceptable and consistent with valuation principles, as noted above. The general methodology for calculating the carrying charge appears to be consistent with the terms of the code of federal regulations. The allocation methodology in the Gulf Power Company calculation involves allocating usable and unusable space to attachers. The justification for this is that without the unusable portion of the pole there would be no elevated communications corridor. Therefore, all users of the pole should bear the cost of the unusable space on the pole.

CONCLUSION

A replacement cost methodology is the most appropriate estimation of fair market value for Gulf Power Company's pole space.

There are other factors that are of a qualitative nature and are very real that have not been quantified. These include the issue raised regarding the probability that attachers are cherry picking the poles to which they are attaching. As a result, the treatment of all poles as average would very likely understate the value of the poles to which a cable television company attaches. Additionally an asset that is in use often has a value greater than replacement value. Because it is difficult to quantify these factors, I have not attempted to do so. However, these factors could have an upward influence on the value of pole space, making Gulf Power Company's calculations conservative.

I reserve the right to modify my opinions as additional information becomes available to me.

ROGER A. SPAIN, C.P.A., C.V.A.

Roger Spain is a manager with Aldridge, Borden & Company, P.C., in Montgomery, Alabama. He is a 1990 graduate of Auburn University where he received a Bachelor of Science degree in Accounting. He has spent over twelve years in public accounting.

Roger's area of expertise is in accounting and business consulting. He also has significant experience in the audit and tax services areas. Roger is a Certified Public Accountant licensed to practice in Alabama and Mississippi. He also holds the Certified Valuation Analyst designation offered by the National Association of Certified Valuation Analysts. Having successfully completed levels 1 and 2, Mr. Spain is a level 3 candidate in the Chartered Financial Analyst (CFA) program.

Education/Certification

Bachelor of Science in Accounting, Auburn University, 1990
Certified Public Accountant, Alabama, 1992
Certified Public Accountant, Mississippi, 1999
Certified Valuation Analyst, 2003

Areas of Practice

Management Advisory and Consulting Services
Traditional Accounting and Tax Services

Services Provided

Business Valuation
Accounting and Auditing
Tax Consulting and Preparation

Professional Memberships

American Institute of Certified Public Accountants
Alabama Society of Certified Public Accountants
National Association of Certified Valuation Analysts

Teaching

Numerous Courses on Utility Accounting throughout the United States
Auburn University, Professor for a Day Program