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2/1/94

Jack L. Haskins
Manager of Rates and Regulatory Matters
and Assistant Secretary

the southern electric system

October 10, 1994

ORIGINAL
FILE COPY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0870

Dear Ms. Bayo

RE: Docket No. ~~930885~~-EU

Enclosed are an original and fifteen copies of the Rebuttal
Testimony and Exhibit of Russell L. Klepper on behalf of
Gulf Power Company to be filed in the above docket.

Sincerely,

Jack L. Haskins

mas
FPSC BUREAU OF RECORDS

ab

- ACK _____
- AFA _____ Enclosures
- APP _____ cc: Beggs and Lane
- CAF _____ Jeffrey A. Stone, Esquire
- CMU _____
- CTR _____
- EAG _____
- LEG Stuart
- LIN _____
- OPC _____
- RCR _____
- SEC 1
- WAS _____

"Our business is customer satisfaction"

DOCUMENT NUMBER-DATE

10345 OCT 10 94

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition to resolve territorial)
dispute with Gulf Coast Electric) Docket No. 930885-EU
Cooperative, Inc. by Gulf Power Company.) Date filed: 10/10/94
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the rebuttal testimony and exhibits of Russell L. Klepper submitted on behalf of Gulf Power Company in this proceeding have been furnished by U. S. Mail this 10th day of October, 1994, to the following:

Martha Carter Brown, Esquire
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Attorneys for Gulf Power Company

**ORIGINAL
FILE COPY**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 930885-EU

PREPARED REBUTTAL TESTIMONY

AND EXHIBIT OF

R. L. KLEPPER

OCTOBER 10, 1994



DOCUMENT NUMBER-DATE

10345 OCT 10 1994

FPSC-RECORDS/REPORTING

1 Gulf Power Company

2 Before the Florida Public Service Commission
3 Rebuttal Testimony of

4 R. L. Klepper

5 Docket No. 930885-EU

6 Date of Filing: October 10, 1994

7

8 Q. Please state your name, business address, and occupation.

9 A. Russell L. Klepper. My business address is 10933

10 Crabapple Road, Suite 105, Roswell, Georgia 30075. I am

11 the Founder and Principal of Rawson, Klepper & Company, a

12 small utility and energy consulting services firm.

13

14 Q. Please describe your educational background.

15 A. I hold a Bachelor of Science in Business Administration

16 with a major in Economics and a Master of Business

17 Administration with a major in Finance, both from the

18 University of Florida, and a Master of Professional

19 Accountancy from Georgia State University.

20

21 Q. Do you have any exhibits to which you will be referring

22 during the course of your testimony?

23 A. Yes, I will refer to four exhibits in my testimony.

24 Counsel: We ask that Mr. Klepper's four exhibits (RLK-1,

25 RLK-2, RLK-3, and RLK-4) be numbered for

identification as Exhibits _____, _____, _____,

and _____, respectively.

1 Q. Please describe your applicable utility experience.

2 A. I have over seventeen years of applicable utility
3 experience, the first seven as an employee in the
4 financial areas of a major utility. For the past ten
5 years, the preponderance of my time has been spent as an
6 independent consultant on utility finance, rates and
7 regulation, as well as certain facets of the economics of
8 both regulated and unregulated firms which produce, sell,
9 and distribute electric power for consumption by ultimate
10 customers. I have provided professional services to both
11 investor owned and governmental utilities, to private
12 companies that have significant interests in the electric
13 power industry, and to entities such as the World Bank,
14 the United States Energy Association, and the Edison
15 Electric Institute. As a consultant, I have developed
16 and presented two national seminars and numerous in-house
17 seminars which focus on different aspects of utility
18 planning and decision making.

19 A significant portion of my professional activities
20 involves analyzing the public policy implications of
21 alternative forms of utility ownership, as well as
22 writing and speaking on this matter. These public policy
23 implications include examining the necessity of direct
24 federal involvement in the electric utility industry, and
25 determining the true economic cost of electric service

1 inclusive of governmentally funded transfer payments to
2 electric consumers who are the ultimate beneficiaries of
3 such transfer payments. A more detailed Summary of
4 Professional Credentials is attached to this rebuttal
5 testimony as Exhibit No. ____ (RLK-1).
6

7 Q. Have you previously appeared before the Florida Public
8 Service Commission?

9 A. No, I have previously neither submitted testimony nor
10 personally appeared before the Florida Public Service
11 Commission (hereinafter the "Commission" or the "PSC").
12 However, I did prepare an Affidavit, briefly describing
13 the public policy issues relevant to this proceeding,
14 which was submitted to this Commission on or about June
15 30, 1994, as Exhibit B to the MOTION OF GULF POWER
16 COMPANY TO LIMIT SCOPE OF ISSUES OR, IN THE ALTERNATIVE,
17 TO EXTEND TIME FOR FILING REBUTTAL TESTIMONY.
18

19 Q. What is the purpose of your rebuttal testimony?

20 A. I have been asked by Gulf Power Company ("Gulf Power"),
21 to examine, assess, and address the public policy issues
22 raised by the prefiled direct testimony of Gulf Coast
23 Electric Cooperative ("GCEC") Witnesses H. W. Norris and
24 Archie W. Gordon, to the limited extent that GCEC's
25 prefiled testimony addresses the specific electric

1 service dispute that is the focal issue in this
2 proceeding. Gulf Power also requested that I examine and
3 address issues raised by GCEC which pertain to the
4 differing ownership structures of Gulf Power and GCEC.
5 My testimony as a whole is intended to show that it would
6 be unwise for the PSC to exercise its jurisdiction over
7 territorial matters as a basis for expanding the
8 definition of the area in dispute beyond that set forth
9 in Gulf's petition and prehearing statement in this case.
10 I also show why it would be unwise for the Commission to
11 decide this case in favor of GCEC, especially if the
12 disputed area is considered to be an area larger than the
13 parcel of land that the Department of Corrections ("DOC")
14 is developing as the Washington County Correctional
15 Facility ("the Facility").

16

17 Q. What activities have you undertaken in the course of your
18 examination and assessments conducted at the request of
19 Gulf Power?

20 A. I have examined the entire record in this case, Docket
21 No. 930885-EU, including but not limited to all
22 pleadings, all direct and rebuttal testimony submitted by
23 Gulf Power, all direct testimony submitted by GCEC, and
24 all items of discovery that have been answered at the
25 time of submission of this rebuttal testimony. I

1 personally attended the depositions of GCEC witnesses
2 Norris, Gordon, and Jeff Parish, and the deposition of
3 Ron Kronenberger of the DOC. I also reviewed the
4 deposition transcript of Gulf Power Witnesses John E.
5 Hodges, Jr., M. W. Howell, W. F. Pope, and W. C.
6 Weintritt. In addition, to identify the relevant public
7 policy issues, I have reviewed in full the Rural
8 Electrification Act of 1936, With Amendments as Approved
9 Through December 17, 1993, and other pertinent federal
10 legislation, Chapter 425 of the Florida Statutes
11 regarding rural electric cooperatives, Section 366.04 of
12 the Florida Statutes granting Commission jurisdiction
13 over territorial disputes and agreements, and Commission
14 Rules 25-6.0439 et seq. regarding territorial disputes
15 and agreements.

16 I also reviewed the Commission Staff Memorandum
17 regarding HB 405, the proposed territorial bill sponsored
18 by Florida's electric cooperatives. That bill, had it
19 passed, would have removed all vestiges of competition
20 between utility suppliers and, in Northwest Florida would
21 have relegated many customers to higher rates and less
22 reliability.

23

24 Q. Please summarize your direct testimony.

25 A. On the basis of my examination of the evidence in this

1 proceeding and other documentation which pertains to the
2 matters under consideration in this proceeding, I have
3 come to the following conclusions:

- 4 ● The public policy considerations that are relevant
5 to the subject service dispute, as manifested in both
6 federal law and the Florida statutes, overwhelmingly
7 favor a Commission determination that Gulf Power should
8 provide electric service to the Facility to be built by
9 the DOC.
- 10 ● The arguments posed by H. W. Norris, that GCEC
11 should be awarded the right to serve the Facility based
12 on Gulf Power's alleged prior unwillingness to provide
13 retail electric service to Washington County, are wholly
14 inaccurate and unsupported by any credible evidence, and
15 in any event, are not pertinent to the question of which
16 utility should serve the Facility in light of current
17 circumstances.
- 18 ● The implied contract, pursuant to which GCEC
19 provided Washington County with (a) a \$45,000 grant, (b)
20 the waiver of \$42,000 in reimbursable costs for the
21 removal and relocation of an electric line, and (3)
22 substantial assistance in obtaining a \$308,000 interest
23 free loan, all in exchange for an understanding that GCEC
24 would be allowed to provide electric service to the
25 Facility, is contrary to public policy and the express

1 intent of Congress as explicitly set forth in the Rural
2 Electrification Loan Restructuring Act of 1993.

3

4 Q. Mr. Klepper, in your opinion, what should constitute the
5 overriding public policy consideration in settling any
6 utility service dispute between investor owned and rural
7 cooperative utilities?

8 A. There should be no argument among the parties that the
9 economic foundation of the United States is anchored in
10 the concept of capitalism, an economic system whereby
11 capital is invested in enterprises by investors who hope
12 to earn a fair and compensatory return, known as a
13 profit, on their equity investment. In some special
14 circumstances, such as the provision of electric service
15 to rural customers, governments may decide that it serves
16 the public interest to subsidize the price which
17 disadvantaged consumers would pay for a particular
18 commodity if purchased under free market conditions.

19 However, it would be contrary to the fundamental
20 economic system employed in the United States if an
21 investor owned utility were denied the opportunity to
22 pursue and expand its legitimate business interests,
23 while at the same time causing the disadvantaged consumer
24 to purchase the desired electric service at a higher,
25 albeit subsidized, price. For this reason above all

1 others, it is appropriate that the subject service
2 dispute be resolved in favor of Gulf Power, the investor
3 owned utility which can serve the Facility at a lower
4 cost and without the necessity of further subsidies from
5 all U.S. taxpayers.

6

7 Q. It appears that the economic principle stated above
8 applies to free-market enterprises, while this service
9 dispute must be decided by an agency whose primary
10 function is to regulate providers of monopoly services.
11 Why does this economic principle apply?

12 A. The economic principle set forth above is directly
13 applicable because it is the policy purpose of economic
14 regulation to act as a surrogate for competition in
15 circumstances, such as the presence of natural monopoly
16 conditions, where free market competition does not exist.
17 Accordingly, regulation is considered to be most
18 effective when it produces the same incentives and thus
19 the same results that would have occurred if free market
20 forces were present.

21

22 Q. How would this electric service issue have been decided
23 if free market forces were present?

24 A. There can be no question that, under such circumstances,
25 Gulf Power would have been chosen to provide the electric

1 service to the Facility. There is no legitimate reason
2 why any electric consumer, faced with the option of
3 choosing service from one of two potential providers,
4 would fail to choose the provider which offers the lower
5 current price, the better service reliability, and
6 possibly more importantly, the better prospect for
7 maintaining lower prices and better reliability.

8

9 Q. What is the policy of DOC with respect to choosing an
10 electric service provider to a new facility to be located
11 in a disputed service territory?

12 A. Attached as Exhibit No.____(RLK-2) is a letter dated
13 August 11, 1987, from Bill Thurber of the DOC to William
14 C. Weintritt of Gulf Power, which specifically expresses
15 DOC's preference for service to the Holmes Correctional
16 Institution by Gulf Power based on the annual cost
17 savings to be realized from such service.

18 During his deposition of October 7, 1994, Ron
19 Kronenberger of the DOC confirmed that the DOC policy set
20 forth in Mr. Thurber's letter remains in effect.

21

22 Q. If the DOC policy is to choose the electric supplier
23 based on a criterion of lower cost service, did Mr.
24 Kronenberger express a preference during his deposition

25

1 for service by Gulf Power as the acknowledged low cost
2 provider?

3 A. Mr. Kronenberger stated that the DOC supports the
4 existing decision to have service to the Facility
5 provided by GCEC. As the basis for this decision, Mr.
6 Kronenberger stated his understanding, based on a DOC
7 internal cost analysis, that service provided by Gulf
8 Power may not result in significant cost savings for
9 electric service, particularly when the benefit of
10 patronage credits is considered. However, the record in
11 this case, specifically the testimony of both Gulf Power
12 Witness Weintritt and GCEC Witness Gordon, shows that Mr.
13 Kronenberg's understanding is inaccurate and that there
14 is agreement between Gulf Power and GCEC that service to
15 the Facility by Gulf Power would be less expensive. Mr.
16 Kronenberger was also under the misimpression that
17 patronage credits would provide a current rate benefit.
18 This plainly is not the case, as discussed later in this
19 testimony. Further, Mr. Kronenberger acknowledged that
20 the DOC's decision in this matter would be impacted by
21 the knowledge that the benefit of patronage capital would
22 be deferred for a period as long as ten years.

23 Exhibit No. ___ (RLK-3) to my testimony is a copy of
24 the entire transcript of Mr. Kronenberger's deposition.

25

1 Q. How do you respond to GCEC's assertion, made by Mr.
2 Norris in his direct prefiled testimony, that GCEC was
3 created, and should therefore be allowed to serve the
4 Facility, since Gulf Power "made a conscious decision not
5 to provide service in any rural area where they felt they
6 could not make a profit"?

7 A. No credible evidence has been produced in this proceeding
8 showing that Gulf Power made any decision to decline a
9 service request from any potential electric consumer in
10 the Florida counties in which GCEC now serves.
11 Obviously, Mr. Norris has no firsthand knowledge as the
12 basis for his assertion, since he was not employed by
13 GCEC until 1976. In response to questions posed at his
14 deposition, Mr. Norris stated that he is unable to
15 provide any documentary support for his assertion.

16

17 Q. In passing the Rural Electrification Act of 1936, did
18 Congress intend that the rural cooperatives would compete
19 with, or supplant, investor owned electric utilities?

20 A. Absolutely not. The framers of the Rural Electrification
21 Act intended that this legislation would supplement the
22 efforts of both investor owned and municipal utilities to
23 increase electrification and improve the quality of life
24 throughout the United States. It is clear that Congress
25 was well aware that the investor owned utilities would

1 continue to bear the preponderance of the burden for
2 electrifying America.

3 As an example, in Northwest Florida, Gulf Power made
4 all necessary capital expenditures in generating and
5 transmission facilities and incurred all necessary
6 operating costs to provide adequate and reliable
7 wholesale service to GCEC. Thus, Gulf Power bore the
8 preponderance of the electric service cost burden which
9 allowed GCEC to provide retail electric service in
10 Washington County and the other counties served by GCEC.
11 In fact, Gulf Power continues to serve more rural
12 customers in Northwest Florida than the four Northwest
13 Florida rural electric cooperatives combined.

14

15 Q. Is this historical perspective relevant to the focal
16 question of which utility should be awarded the right to
17 serve the Facility?

18 A. Not in my opinion. The foregoing comments have been
19 presented only to erase the misimpression created by GCEC
20 concerning Gulf Power's alleged reluctance to fulfill its
21 service obligations. The focal question of which utility
22 should provide electric service to the Facility should
23 properly be determined based on current facts and
24 circumstances and not on historical happenstance.

25

1 Q. What facts and circumstances, specifically related to
2 issues of public policy, do you believe should be
3 considered by the Commission in rendering its decision in
4 this matter?

5 A. There are four areas of public policy, each to be
6 discussed in greater detail, which I believe the
7 Commission should consider in making this determination.
8 These are:

9 1. The energy policies of the Department of Energy
10 and of Congress, which enacted the Energy Policy Act of
11 1992, are specifically intended to create an increasingly
12 competitive electric utility environment.

13 2. Service to the facility by Gulf Power, an
14 investor owned electric utility, would be consistent with
15 the objectives of both the Rural Electrification Act and
16 the applicable Florida statutes.

17 3. As an investor owned utility subject to rate
18 regulation by the Commission, Gulf Power is economically
19 motivated by the profit incentive to maintain rates at
20 the lowest possible level consistent with levels of
21 service acceptable to its customers. As a rural
22 cooperative utility, GCEC is free of regulatory oversight
23 and has no economic motivation.

24 4. The price to be paid for electric service, both
25 now and in the future, by an instrumentality of the State

1 of Florida that is non-revenue producing and therefore
2 funded by Florida taxpayers, is an appropriate
3 consideration in the instant proceeding.

4

5 Q. How is national energy policy established in the United
6 States, and what responsibility does REA have to follow
7 these policies?

8 A. National energy policy is established in two ways: by the
9 Department of Energy, a part of the Executive Branch of
10 the federal government, and by Congress, the Legislative
11 Branch of the federal government. Agencies of the
12 Department of Energy, in particular the Federal Energy
13 Regulatory Commission ("FERC") in the case of electric
14 and gas utilities, bear the responsibility to implement
15 national energy policy arising from both executive orders
16 and federal legislation.

17 The Department of Energy Organization Act of 1977
18 amended the Rural Electrification Act to require the
19 Administrator of the REA, when making or guaranteeing
20 generation or transmission loans, to consider general
21 criteria published by the Secretary of Energy. Such
22 published criteria should logically include the federal
23 legislation enacted by Congress which is then
24 operationally implemented by the Department of Energy.

25

1 Q. What has been the general direction of national energy
2 policy, to the extent such policy applies to electric
3 utilities, as illustrated by the activities of the
4 Department of Energy?

5 A. Without question, the Department of Energy, acting
6 through FERC, has purposefully acted to create a more
7 competitive and cost effective electric utility industry
8 to minimize electric service costs to ultimate customers.
9 Over the past twenty five or so years, a major policy
10 shift implemented by FERC provides that wholesale power
11 customers, who formerly were obligated to purchase their
12 full or partial electric requirements from the utility
13 which supplied such requirements under a perceived
14 obligation to serve, are no longer obligated to purchase
15 their electric requirements from that supplier following
16 the expiration or termination of any existing wholesale
17 power contract. This action serves to sharpen
18 competition in the wholesale power industry, and is the
19 very action which allowed GCEC to purchase its power
20 requirements from Alabama Electric Cooperative ("AEC")
21 instead of Gulf Power, which had provided wholesale
22 electric service to GCEC since its inception.

23

24 Q. Please describe the prominent recent federal legislation
25 which established national energy policy.

1 A. As this Commission and the parties to this proceeding are
2 well aware, the Energy Policy Act of 1992, enacted on
3 October 24, 1992, is comprehensive federal legislation
4 affecting all segments of the energy industry. Expanding
5 the initiatives which had been implemented by FERC, the
6 Energy Policy Act substantially deregulated the wholesale
7 power industry and opened access to transmission lines,
8 bringing new suppliers and new arrangements to the energy
9 scene.

10

11 Q. Have the actions of REA, as required by federal law, been
12 consistent with the criteria published by the Department
13 of Energy?

14 A. No, they have not been consistent with such published
15 criteria. Instead, they have been contrary to such
16 criteria. An example of the blatant disregard of REA and
17 its constituents for national energy policy can be found
18 in this proceeding in the form of the most recently
19 executed agreements between GCEC and AEC. For the
20 purpose of the following discussion, attached to this
21 rebuttal testimony as Exhibit No. ___ (RLK-4) is a four
22 part exhibit.

23

24 Q. As a necessary preface to the discussion of Exhibit No.
25 ___ (RLK-4), please describe AEC.

1 A. AEC is a rural generating and transmission ("G&T")
2 cooperative headquartered in Andalusia, Alabama. It has
3 twenty one members, comprised of sixteen distribution
4 cooperatives (four from Florida, including GCEC, and
5 twelve from Alabama), four municipal members in Alabama,
6 and one industrial member from Alabama. AEC is governed
7 by a 42 member board of trustees, which includes two
8 voting members from each of the 21 member-owners. GCEC
9 is represented on the AEC board of trustees by H. W.
10 Norris, the Manager of GCEC, and by Coy F. Brahier, who
11 also serves as Secretary of GCEC.

12
13 Q. What is the primary contractual relationship between GCEC
14 and AEC?

15 A. On October 20, 1970, GCEC and AEC entered the Contract
16 for Wholesale Power Service (hereinafter the "Power
17 Contract") which requires that GCEC purchase all of its
18 electrical supply requirements from AEC.

19
20 Q. Please describe the documents which are attached as
21 Exhibit No. ___ (RLK-4).

22 A. Part A is a copy of the official approval, dated June 7,
23 1993, provided by REA to AEC in respect of the agreements
24 which are identified as Part B and Part C of this
25 exhibit.

1 Part B is a three page agreement between GCEC and
2 AEC, effective as of November 2, 1992, subsequent to the
3 enactment of the Energy Policy Act, entitled "Amendment
4 to Contract for Wholesale Power Service". The heart of
5 this amendment to the Power Contract is found in
6 paragraph 16 on page 2, which provides that during the
7 term of the Power Contract, GCEC cannot sell, lease or
8 transfer all or a substantial portion of its assets
9 without the express consent of both REA and AEC. The
10 consent of AEC for any such action can be withheld if AEC
11 finds that such transaction will result in rate increases
12 to other members or would impair the ability of AEC to
13 repay its loans to REA or other lenders. This agreement
14 is nothing more than a "poison pill provision" intended
15 to render impractical the purchase, merger or takeover of
16 GCEC by any other utility (except for another utility
17 served by AEC), even if any such action would be in the
18 best economic interests of GCEC's member-owners.

19 Part C is a two page agreement between GCEC and AEC,
20 also effective as of November 2, 1992, entitled
21 "Supplemental Agreement to Contract for Wholesale Power
22 Sale". The sole purpose of this Supplemental Agreement
23 is to expand the rights of both AEC and REA to enforce
24 the terms of the Power Contract. While not stated within
25 the text of the agreement, REA has regularly sought and

1 obtained agreements of this kind from members of the G&T
2 cooperative borrowers in order to assure that the
3 distribution cooperatives will not undertake to
4 participate in the wholesale power market by purchasing
5 power from non-utility generators, an alternative
6 specifically encouraged under the Energy Policy Act which
7 had been enacted nine days earlier.

8 Part D is a two page document entitled "Certificate"
9 which is a resolution of GCEC's Board of Trustees which
10 purports to justify the entering by GCEC of the
11 agreements attached as Parts B and C. As the alleged
12 justification for such agreements, which clearly serve to
13 stifle the benefits of competitive forces which might
14 otherwise be available to GCEC, it is purported that the
15 REA has required that AEC's member-owners execute such
16 documents as a condition to AEC's receipt of certain REA
17 loans.

18

19 Q. Can you provide other evidence of REA's actions which are
20 directly contrary to established national energy policy?

21 A. As stated earlier, GCEC and AEC originally entered the
22 Power Contract on October 20, 1970. Section 2 of the
23 Power Contract provides that GCEC shall terminate any
24 contract with a power supplier, in this case Gulf Power,
25 upon the request of AEC. Upon the execution of the Power

1 Contract, GCEC was no longer in a position to choose its
2 wholesale power supplier on the basis of competitive
3 forces, contrary to the direction of national energy
4 policy.

5 Mr. Norris has alleged in his direct testimony that
6 AEC changed power suppliers because of unsatisfactory
7 service provided by Gulf Power in 1974. The fact is that
8 in 1970, GCEC had conferred on AEC the contractual right
9 to cause GCEC to stop taking power from Gulf Power
10 whenever AEC became prepared to provide service to GCEC.
11 Thus, the reasons cited by Mr. Norris for the change of
12 wholesale power suppliers from Gulf Power to AEC is
13 incorrect.

14

15 Q. Can you cite further evidence of REA's actions which are
16 contradictory to established national energy policy?

17 A. As originally executed in 1970, the termination date of
18 the Power Contract was December 1, 2010. On July 15,
19 1975, at the written request of AEC, GCEC and AEC
20 executed an amendment to the Power Contract which
21 extended the termination date of the Power Contract to
22 December 1, 2015, an extension period of five years.
23 Similarly, on September 18, 1984, pursuant to REA's
24 request that the Power Contract be extended to provide
25 additional security for REA and other loans to AEC, GCEC

1 and AEC executed an amendment to the Power Contract which
2 extended the termination date of the Power Contract for
3 an additional ten years, to December 31, 2025.

4 Each of these extensions was undertaken by AEC and
5 GCEC at the specific direction of REA, notwithstanding
6 that each such action flies in the face of national
7 energy policy objectives of increasing wholesale
8 competition. As a practical matter, the existing full
9 requirements contract between GCEC and AEC precludes
10 GCEC's ability for at least the next 31 years (assuming
11 no further extensions) to realize economic benefits
12 through direct participation in the wholesale power
13 markets.

14

15 Q. Since you have shown that the actions undertaken by GCEC
16 and AEC at the direction of REA have been inconsistent
17 with national energy policy objectives, it is fair and
18 reasonable to ask whether the action contemplated by Gulf
19 Power in providing electric service to the Facility is
20 similarly inconsistent with the national policy
21 objectives of the Rural Electrification Act and related
22 federal legislation?

23 A. The action contemplated by Gulf Power in providing
24 electric service to the Facility will fulfill the
25 national policy objectives of the Rural Electrification

1 Act and related federal legislation better than those
2 objectives would be satisfied if GCEC provides the
3 service. The overriding policy objective of the Rural
4 Electrification Act is to make electric energy available
5 to persons in rural areas and to furnish and improve
6 electric service in such areas at prices that are
7 reasonable and affordable to the consumers. Service to
8 the Facility by Gulf Power will be both more reliable and
9 more affordable than service by GCEC, thus better
10 satisfying the primary policy objective of the Rural
11 Electrification Act.

12

13 Q. Does the Rural Electrification Act or any other federal
14 legislation establish a preference for service by rural
15 electric cooperatives over service by other forms of
16 electric utilities?

17 A. No, there is no such preferential right. Unfortunately,
18 the overriding policy objective cited above is often
19 confused with the means made available under the Act to
20 accomplish this objective, which is through the making of
21 loans. The creation of rural electric cooperatives is
22 clearly not an objective of the Act, but rather is
23 referenced in the Act strictly as one of the several
24 alternative mechanisms to effect the policy objective.
25 There was clearly no legislative intent that cooperatives

1 would compete with or supplant investor owned utilities,
2 as implied by GCEC.

3

4 Q. How is this matter addressed by the laws of the State of
5 Florida?

6 A. Chapter 425 of the Florida Statutes mirrors federal law
7 in this regard. Moreover, Section 425.04, subsection (4)
8 of this chapter reflects the legislative intent that
9 cooperatives shall not serve Florida's electric customers
10 that can be adequately provided with electric service by
11 either an investor-owned or municipal utility.

12

13 Q. Does the Rural Electrification Act or any other federal
14 or state legislation establish a stated policy or
15 objective for rural cooperatives to seek commercial or
16 industrial loads in order to improve load factor,
17 density, or any other electric operating characteristic?

18 A. Although I have studied this legislation at some length,
19 I am not aware of any such policy or objective. The
20 policy stated by GCEC that it desires to serve commercial
21 and industrial load is a common, widespread general
22 policy among electric utilities, all of which desire the
23 acquisition of new loads with characteristics that will
24 result in operating efficiencies, scale economies, or
25 both.

1 Q. Can you explain why the actions of REA have been
2 inconsistent with national energy policy?

3 A. Many administrative agencies, such as FERC, the Federal
4 Communications Commission, the Interstate Commerce
5 Commission, and on a state level, this Commission and
6 other similar public utility commissions, have powers of
7 regulatory oversight that have been established by law.
8 This is not the case with REA, which was established
9 under the Rural Electrification Act as an agency of the
10 Department of Agriculture to make and administer loans
11 made for the special purpose of rural electrification.
12 Accordingly, the actions of REA are consistent not with
13 national energy policy, but rather with those that would
14 be taken by any lender seeking to protect the security of
15 its outstanding loans.

16 The exposure to greater competition will generally
17 weaken entities that are either unprepared or
18 economically unable to successfully compete in a modified
19 operating environment. Thus, REA has sought to shield
20 its rural electric cooperative borrowers from the impacts
21 of competition, even though such impacts are intended to
22 produce significant beneficial effects to the customer-
23 members of such cooperatives.

24
25

1 Q. Can you cite evidence of the deliberate efforts to shield
2 cooperatives from competitive forces?

3 A. As evidence of this anti-competitive attitude, most
4 cooperatives, including those in Florida, enjoy the
5 protection of legislation rendering it a practical
6 impossibility for any investor owned utility to acquire
7 rural electric service territories. In the event this
8 protective legislation changes, many cooperatives have
9 now effected "poison pill" provisions, such as those
10 discussed in Exhibit RLK-4, which substantially increase
11 the difficulty of effecting any change in a cooperative's
12 ownership structure. The rural electric cooperatives
13 seek to maintain this territorial protection because of
14 their explicit recognition that the economic
15 considerations which initially led to the development of
16 rural electric cooperatives are no longer valid, and thus
17 there is no longer any economic justification which
18 assures the continuing existence of such entities.

19

20 Q. Has GCEC sought in this proceeding to imply that the
21 powers of the REA extend beyond those of a lending
22 agency?

23 A. I believe that GCEC has attempted to mislead the
24 Commission by implying that REA exercises regulatory
25 oversight which supplants the purview which might

1 otherwise be provided by the Florida PSC. In particular,
2 Mr. Norris claims that the mission of GCEC is:

3 "To provide electric service to the cooperative's
4 members in our service area at the lowest cost
5 possible following prudent business practices, and
6 in compliance with rules and regulations of the
7 Rural Electrification Administration."

8

9 Q. Does GCEC claim that REA provides regulatory oversight
10 for its operation, or for the operation of AEC, the
11 cooperative which provides GCEC with its sole source of
12 power supply?

13 A. As evidenced by its Member Handbook, GCEC understands the
14 actual role of REA. Page 7 of GCEC's Member Handbook
15 explains:

16 "Rural Electrification Administration is a Federal
17 Agency in the United States Department of
18 Agriculture which lends money to rural electric
19 power suppliers and administers such loans. The
20 control they retain over the Cooperative is not
21 dissimilar to the controls a saving and loan bank
22 retains over a home it has financed."

23 The declaration by GCEC that it provides service in
24 compliance with rules and regulations of the REA can
25 provide little comfort to this Commission. In truth, the

1 influence which REA should properly exert over GCEC is
2 directly comparable to the influence which the Chase
3 Manhattan Bank in New York exerts over Gulf Power in its
4 capacity as Trustee of Gulf Power's Mortgage Indenture.

5

6 Q. Is there any danger to the customers of a distribution
7 cooperative, such as GCEC, as a result of the cooperative
8 entering into long term sole source contracts?

9 A. Yes. Under the auspices of the REA lending regime, which
10 only began to fund loans for construction of generating
11 and transmission facilities in the mid-1960s, at least
12 twelve of the approximately thirty nine G&T cooperatives
13 to which REA has outstanding loans are now on REA's
14 "Troubled Cooperative Borrowers List". At least two G&T
15 cooperatives are now operating under federal bankruptcy
16 protection. Some estimates have placed the losses within
17 REA's portfolio attributable to unrecoverable loans to
18 G&T cooperatives at \$10.1 billion.

19 By comparison, the vast preponderance of electric
20 service in the United States is provided by approximately
21 two hundred investor owned utilities, only three of which
22 are considered to be experiencing any significant degree
23 of financial problems, and none of which are currently in
24 bankruptcy. Any distribution cooperative served by a
25 financially troubled G&T borrower experiences the fallout

1 due to the full requirements nature of the REA mandated
2 contracts between the G&T cooperatives and the
3 distribution cooperatives.

4 To look at the question in another way, a
5 disproportionate number of the troubled G&T cooperative
6 utilities serve states in which the rates charged by the
7 distribution cooperatives are subject to regulation by
8 the state public service commission. The inference to be
9 drawn from this observation is that rural electric
10 cooperatives in states, such as Florida, which do not
11 provide rate protection to cooperative customers are more
12 likely to charge rates which are neither just nor
13 reasonable but which are rationalized on the basis of
14 maintaining the financial health of the G&T cooperative
15 which provides the power supply to the distribution
16 cooperative.

17

18 Q. Does the REA consider rate impacts to the cooperatives
19 customers when making or administering loans?

20 A. No, it does not. In fact, REA has shown that it is very
21 willing to abuse cooperative member-customers to protect
22 the security of its loans to the cooperative community.
23 Two examples will illustrate REA's contemptuous attitude
24 toward cooperative electric customers.

25

1 The first example pertains to a financially troubled
2 G&T cooperative in Ohio which sought a rate increase to
3 its distribution cooperative members. The Ohio Public
4 Service Commission found that the requested rate increase
5 was unwarranted. REA then asserted that as a federal
6 agency, its regulatory oversight superseded state
7 regulation, and attempted to effect the rate increase
8 which the state public service commission had denied. On
9 appeal, the Federal Court of Appeals for the Sixth
10 Circuit found that the REA had no authority to declare
11 itself, and was not, a federal regulatory agency, and
12 thus could not effect a rate increase which the state
13 regulatory body found insupportable. The United States
14 Supreme Court refused to grant further consideration to
15 this matter. Notwithstanding the Sixth Circuit decision,
16 REA continues to contend in other jurisdictions that it
17 exercises federal regulatory oversight.

18 An even more blatant example of REA's attitude is
19 found in a financially troubled G&T cooperative in
20 Kentucky, where the fuel costs which were passed to the
21 distribution cooperatives and then to the customers were
22 found to be unreasonable due the extensive criminal
23 activities of the G&T cooperative's general manager.
24 Efforts have been made and continue to be made to recover
25 the excessive fuel costs which were borne by the

1 customers as a result of such criminal activity. In
2 taking a stance which totally defies logic, REA has
3 asserted that recoveries of excess fuel costs should be
4 paid to REA to reduce debt rather than returned to the
5 customers who paid the excess fuel costs which never
6 would have been collected from these customers absent the
7 criminal activities of the cooperative's general manager.
8 In effect, REA has provided an incentive for this G&T
9 cooperative to deliberately cheat its customers and
10 thereafter to effect recoveries of excess fuel costs from
11 its fuel suppliers, such that these recoveries can be
12 devoted to repayment of debt.

13

14 Q. How does the role of REA as a lending agency, combined
15 with the governmental characteristics of the cooperative
16 segment of the electric utility industry, pertain to this
17 proceeding, which examines a single service dispute
18 between an investor owned and a cooperative utility?

19 A. The electric service rates charged by GCEC are already
20 significantly higher than those charged by Gulf Power,
21 even though GCEC receives substantial federal subsidies
22 which are unavailable to Gulf Power. These subsidies
23 include interest rate subsidies, freedom from taxation on
24 income, and most importantly, preferential receipt of
25 extremely low cost federal hydroelectric power. An

1 expansion of GCEC's electric service will increase the
2 necessity for federal subsidies to GCEC and its
3 customers.

4 While the electric rates charged by Gulf Power are
5 currently, and are anticipated to remain, subject to
6 jurisdictional regulation by both FERC and this
7 Commission, there is no regulatory protection whatsoever
8 available to Florida electric consumers who are now
9 served, or will be served, by GCEC.

10

11 Q. Other than the regulatory purview exercised by FERC and
12 this Commission, does Gulf Power have an incentive to
13 control costs?

14 A. As an investor owned utility, Gulf Power is economically
15 motivated to maintain rates at the lowest possible level
16 consistent with a quality of service acceptable to its
17 customers. As a corporation which obtains investment
18 capital in the open market, Gulf Power must continue to
19 perform or it will lose its economic viability.

20 By contrast, GCEC has no such economic motivation.
21 Unlike Gulf Power, which obtains capital based on
22 economic performance, GCEC obtains capital either through
23 federal loans or through forced equity contributions from
24 members who have no discretionary ability to terminate
25 their memberships in the cooperative organization.

1 Q. Are you implying that GCEC does not intend to make
2 reasonable efforts to control its rates to ultimate
3 customers?

4 A. No, I am not implying that GCEC is not well-intentioned.
5 What I am saying is that GCEC is likely to suffer
6 substantial cost increases despite its intentions, and
7 these cost increases will surely manifest themselves in
8 higher rates to GCEC customers.

9

10 Q. Why do you assert that GCEC's costs will increase despite
11 their intention to control these costs?

12 A. There are several reasons, most of which are attributable
13 to the fact that the largest single component of GCEC's
14 cost structure is the expense of obtaining its power
15 supply from AEC. In both 1992 and 1993, this expense
16 comprised approximately 63.4% of GCEC's total operating
17 expenses. If at any time within the next 31 years, the
18 cost of purchasing power from AEC increases to levels
19 which are unreasonable for any reason whatsoever, whether
20 due to bad judgment, poor management or even rampant
21 criminal activity for which GCEC bears no culpability,
22 the electric customers of GCEC will be virtually without
23 remedy and will be forced by REA and AEC to endure these
24 unreasonable costs.

25

1 It is also noteworthy that unlike investor owned
2 utilities, the ownership structure of rural electric
3 cooperatives weighs against their active participation in
4 the more highly competitive utility environment which is
5 expected to provide beneficial market control of electric
6 service costs.

7 In addition, active participation by non-profit
8 subsidized cooperatives in competitive power markets
9 draws attention to the manifest inequity in existing
10 federal subsidies and exposes the cooperatives to
11 increased costs due to the loss of such subsidies. In
12 fact, AEC's 1993 Annual Report discusses Clinton
13 administration efforts to both sell the federal power
14 marketing administrations and to reform the terms of
15 existing federal loans to the power marketing
16 administrations, an action that would significantly
17 increase the cost of power which AEC purchases from the
18 Southeastern Power Administration.

19

20 Q. Can you provide a specific example of the adverse impact
21 on GCEC and its customers arising from the lack of
22 regulatory oversight accorded to G&T cooperatives?

23 A. Yes, I can. According to information obtained from the
24 1993 audited financial statements of both AEC and GCEC,
25 in January of 1991 AEC notified its members of an

1 adjustment of approximately \$26.9 million arising from
2 overcollection of fuel and purchased power costs. In
3 1991, AEC refunded about 12% of this amount to its
4 customer-members, but made no further refunds in 1992 or
5 1993. AEC recognizes a liability to its customers for
6 overcollected costs in the aggregate amount of
7 approximately \$23.7 million, of which about \$875,000 is
8 due to GCEC.

9 However, AEC does not accrue interest on this
10 liability to its customer-members, nor does it have any
11 plan to refund such amounts in the future. It is highly
12 unlikely that, under a regulatory regime, such
13 overcollected amounts could be retained by the utility.
14 Even if the refund were to be made over a specified
15 period of time, it is very likely that the utility would
16 be required to accrue interest on the unrefunded balance.

17 Another clear example resulting from the absence of
18 regulatory influence on AEC is the recent action whereby
19 AEC entered an agreement with the City of Opelika,
20 Alabama, which requires AEC to purchase power from the
21 City of Opelika at an all inclusive cost of more than 55
22 mills per kwh, even though AEC has numerous avenues to
23 acquire energy at a much lower cost. AEC did not enter
24 this agreement because it needed the power; instead, the
25 agreement was entered by AEC to resolve a territorial

1 dispute between the City of Opelika and one of the
2 Alabama member-cooperatives. Under a regulatory regime,
3 the excess cost arising from this transaction would
4 almost certainly be borne solely by the cooperative which
5 benefitted from the resolution of this dispute, and not
6 by the captive customers of the other twenty AEC members.

7

8 Q. Can you comment on GCEC's demand that it receive
9 reimbursement for its \$42,000 cost of relocating the line
10 if GCEC is not selected to serve the Facility?

11 A. GCEC has tried to place the Commission in a difficult
12 position by proclaiming that it will absorb the cost of
13 relocating the line if chosen to serve the Facility, but
14 otherwise it will seek reimbursement for this cost.
15 Certainly, Gulf Power is not responsible for the cost of
16 relocating this line, which was voluntarily removed and
17 relocated by GCEC.

18 However, the salient policy question is whether it
19 would be prudent for GCEC to expend \$42,000 to relocate
20 this line to maintain service to the 41 GCEC customers
21 who produce aggregate annual revenues of only \$2,772, as
22 shown on Item 14 of GCEC's response to the PSC Staff's
23 second set of interrogatories. This revenue clearly does
24 not justify a \$42,000 capital expenditure if a less
25 expensive alternative is available to provide electric

1 service to these customers, and such an alternative does
2 exist.

3 Rather than GCEC spending \$42,000 to relocate its
4 existing line, Gulf Power could assume service to these
5 customers by expending no more than \$3,000 to install a
6 service drop from its existing facilities. This action
7 would relieve GCEC of a clearly uneconomic expenditure
8 which must be borne by its customers, and would similarly
9 relieve the Facility of any obligation to pay for
10 relocating the existing line. Moreover, the residential
11 customers now served from the line would save
12 approximately 30% on the cost of electric service.

13 If the Commission wishes to be guided in this
14 proceeding by principles of incremental cost analysis,
15 the proper approach is to consider the incremental cost
16 of serving the Facility in the context of the total
17 incremental electric service costs arising from the
18 siting of the Facility. The total incremental costs
19 include the costs of maintaining service that GCEC now
20 provides from the electric line that must be removed to
21 accommodate the Facility. If the total incremental costs
22 serve as the basis for the Commission's decision, the
23 appropriate analysis requires that Gulf Power be chosen
24 to serve not only the Facility, but also that Gulf Power
25 should assume service to the 41 existing GCEC customers

1 who can only be served by GCEC if GCEC makes a clearly
2 uneconomic expenditure.

3

4 Q. Given your analysis of this situation, if Gulf Power is
5 selected to provide electric service to the Facility, do
6 you believe that either Gulf Power or the Facility should
7 be required to reimburse GCEC for the cost of relocating
8 the Red Sapp line?

9 A. No. I believe that this cost should be absorbed by GCEC.
10 It would be disingenuous to cause the Facility to bear
11 line relocation costs of \$42,000 to maintain service to
12 existing GCEC customers when that same service could be
13 transferred to Gulf Power for only \$3,000 in costs, an
14 expenditure which Gulf Power would willingly make. If
15 GCEC wishes to make an unjustified expenditure in order
16 to maintain service to existing customers rather than
17 transferring that service responsibility to Gulf Power,
18 then the cost associated with that decision should be
19 borne by GCEC and not the Facility.

20

21 Q. Is the cost of electric service to the Facility is an
22 important policy consideration in this proceeding?

23 A. Yes, the cost of electric service to the Facility should
24 be given serious consideration because such action would
25 properly reflect the policy role of the regulatory body

1 as a surrogate for competitive forces. The failure of
2 this Commission to consider the cost which the Facility
3 would pay for electric service would effectively negate
4 the incentive that each utility should manifest to
5 maintain rates at the lowest possible level consistent
6 with good utility practice.

7 Moreover, I believe that the electric service cost
8 to the Facility, which will be borne by Florida
9 taxpayers, should be accorded more weight in the
10 Commission's deliberations in this proceeding than the
11 Commission might give to a privately owned commercial or
12 industrial enterprise which could reasonably be expected
13 to have considered the cost of electric service, among
14 other factors, in its decision to locate a facility.

15
16 Q. Which utility that is a party to this electric service
17 dispute provides the lowest cost electric service?

18 A. There is no question that the electric service cost to
19 the Facility will be less expensive if provided by Gulf
20 Power instead of GCEC. The only question in dispute
21 between the parties is the magnitude in the difference in
22 cost. In round numbers, Gulf Power has calculated that
23 its service to the Facility would be \$23,000 per year
24 less expensive than service by GCEC. By contrast, GCEC
25 Witness Gordon has asserted that the difference in annual

1 cost would be \$20,000, less an estimated \$10,000 that
2 would be credited to the DOC's patronage capital account.

3

4 Q. Please explain the credit to the DOC's patronage capital
5 account.

6 A. Despite its representation that it is a non-profit
7 entity, GCEC charges its customers more than the cost of
8 electric service. This excess of revenue over cost is
9 retained by GCEC in the form of patronage capital.
10 Patronage capital constructively belongs to the customers
11 who were forced, through their electric rates, to
12 contribute this capital to GCEC. GCEC is obligated under
13 tax law to return this patronage capital to its owners,
14 but there is no prescribed period of time over which this
15 capital must be returned.

16 Currently, GCEC returns patronage capital to its
17 owners, without any adjustment for the time value of
18 money, over an approximate fourteen year cycle. That is,
19 the patronage capital contributed by the member through
20 payment of her electric bill in 1980 may be refunded to
21 the customer after 1994, without interest. Each year is
22 addressed separately. However, GCEC's By-Laws provide
23 that if the owner of the patronage capital cannot be
24 located when GCEC decides to return this patronage
25 capital to its owners, which may be fourteen or more

1 years after such owner has discontinued service from
2 GCEC, then GCEC may construe such patronage capital to
3 have been contributed to GCEC.

4 It is patently ludicrous for GCEC to suggest that
5 the Facility, or any other customer, in making an
6 informed electric service decision, would accord any
7 material weight to the forced accrual of patronage
8 capital over which the customer has no control
9 whatsoever, and which may be returned in the far distant
10 future without any provision for interest, or may in fact
11 never be returned.

12

13 Q. How would you characterize the difference in annual
14 electric service costs to the Facility if served by the
15 competing utilities?

16 A. As discussed above, the difference in annual electric
17 service costs between Gulf Power and GCEC is between
18 \$20,000 and \$23,000, at the initial estimated level of
19 service to be provided. Both utilities believe that
20 electric usage by the Facility will eventually increase,
21 which would serve to correspondingly increase the
22 difference in cost.

23 The increment in electric service costs which the
24 Facility would incur if served by GCEC would be nothing
25 more than a subsidy provided by the taxpayers of the

1 State of Florida to GCEC. There is no economic or legal
2 justification for the Florida PSC to effect any such
3 subsidy for the purpose of promoting GCEC's stated
4 objectives of increasing density and improving
5 efficiency, since such benefits would similarly inure to
6 Gulf Power and its customers.

7

8 Q. Through the testimony of H. W. Norris, GCEC has asserted
9 that it is entitled to serve the Facility because it made
10 a \$45,000 rural development grant to Washington County,
11 agreed to waive \$42,000 for removing and relocating the
12 Red Sapp line, and assisted Washington County in
13 obtaining a \$308,000 interest free loan from the REA.
14 How do you respond to this assertion?

15 A. The \$45,000 grant was made as part of an implied contract
16 with the commissioners of Washington County. GCEC's
17 commitment for this rural development grant was not made
18 unconditionally, but rather with the express
19 understanding that the grant would only be funded if the
20 Florida Department of Corrections ("DOC") committed to
21 locate the Facility in Washington County.

22 The \$42,000 waiver of costs was also a part of the
23 implied contract because these costs would never be
24 incurred if the Facility did not locate in Washington
25 County, but GCEC would not have agreed to waive these

1 costs unless it were allowed to serve the Facility.

2 Similarly, the \$308,000 interest free loan made by
3 REA for the benefit of Washington County was contingent
4 upon the siting of the Facility in Washington County.

5 The DOC had previously indicated that, in
6 consideration of the donation by Washington County of the
7 land for the Facility, the DOC would delegate to the
8 Washington County Commission the right to designate the
9 electric supplier for the Facility. As quid pro quo to
10 GCEC for the grant and assistance in obtaining the
11 interest free loan, it was implicitly understood that the
12 Washington County Commission would exercise this
13 delegated authority to choose GCEC as the electric
14 service provider for the Facility. Subsequent to the
15 siting decision by the DOC, and upon GCEC funding its
16 commitment to make the \$45,000 grant, the Washington
17 County Commission acted to fulfill its obligation under
18 the implied contract.

19

20 Q. What criteria did the Washington County Commission
21 consider in deciding to choose GCEC as the electric
22 service supplier for the Facility?

23 A. There is no evidence in this proceeding that the
24 Washington County Commission considered any criterion
25 other than the singular fact that GCEC had provided

1 substantial financial assistance to the county's effort
2 to have the Facility located within Washington County.
3 In particular, there is nothing in the record to suggest
4 that the Washington County Commissioners considered, or
5 were even aware, that the electric cost to the Facility,
6 and thus to the taxpayers of the State of Florida, would
7 be substantially higher if electric service were provided
8 by GCEC rather than Gulf Power. It is difficult to
9 believe that the Washington County Commissioners, acting
10 in good faith, could have been aware of this service cost
11 differential and would have made a conscious decision to
12 abuse the taxpayers of Florida for the benefit of
13 Washington County.

14

15 Q. What will happen if this Commission fails to ratify the
16 implied contract between GCEC and the Washington County
17 Commission?

18 A. There will be no substantive effect, other than the fact
19 that GCEC may assume a more businesslike approach to
20 conducting its affairs. The GCEC representatives knew
21 (or should have known) that the authority to decide upon
22 an electric service provider was not within the purview
23 of the Washington County Commission. Based on Gulf
24 Power's challenge before this Commission to GCEC's
25 claimed right to serve the facility, GCEC now recognizes

1 that its implied contract with the Washington County
2 Commissioners may be voided and thus it may not realize
3 the underlying objective (of providing service to the
4 Facility) which it had intended in providing the grant
5 and other benefits to Washington County. Accordingly,
6 GCEC now asserts that if the intended objective is not
7 ultimately achieved, it should receive reimbursement for
8 both the \$45,000 grant expenditure and the \$42,000 cost
9 of removing and relocating the Red Sapp line.

10

11 Q. What is the import of GCEC's claim for these
12 reimbursements?

13 A. GCEC's contention that it should receive reimbursements
14 totalling \$87,000 if it is not selected to serve the
15 Facility is irrefutable proof of the intended tying
16 nature of the implied contract between GCEC and the
17 Washington County Commission. In fact, although GCEC
18 claims otherwise, the evidence shows that the economic
19 development aspect of GCEC's financial assistance was
20 fully subordinated to GCEC's motive that the \$87,000
21 would serve as a calculated investment that would
22 effectively secure for the GCEC electric system a major
23 new industrial load.

24

25

1 Q. Will the claimed objectives for the rural development
2 grant and the interest free loan be achieved by the
3 siting of the Facility in Washington County?

4 A. Yes, they will. Because the DOC has decided to site its
5 new Facility in Washington County, all of the intended
6 benefits explicitly cited by GCEC, such as increased
7 payroll and other beneficial economic activity, will
8 inure to the citizens of Washington County regardless of
9 which electric utility is granted the right to provide
10 electric service to the Facility. However, GCEC now
11 seeks to rescind both the grant and the waiver of line
12 relocation costs if a corollary direct benefit to GCEC
13 does not come to fruition.

14

15 Q. Was the interest free loan from REA conditioned on
16 electric service being provided to the Facility by GCEC?

17 A. Electric service to the Facility by GCEC was not an
18 explicit condition for the loan. However, the
19 circumstance under which the loan was granted certainly
20 raises reasonable questions as to whether Washington
21 County could have obtained the loan from the REA if it
22 had been known that GCEC was not assured of the right to
23 provide electric service to the Facility.

24 From reading the loan documentation, it is my
25 understanding that the actual borrower of the monies from

1 the REA is neither Washington County nor any
2 instrumentality of the county, but rather is GCEC itself.
3 GCEC then re-loaned the loan proceeds to Washington
4 County. It is certainly reasonable to conclude that GCEC
5 would not have agreed to act as a principal in this
6 transaction absent a firm belief that it would be granted
7 the right to serve the Facility. This further
8 illustrates the intended tying nature of the REA loan
9 transaction.

10

11 Q. Under the circumstances that you have described, is it
12 correct to conclude that the Facility would not have been
13 sited in Washington County except for the financial and
14 other assistance provided by GCEC?

15 A. No, any such conclusion is unsupported by any credible
16 evidence. GCEC has continually contended in this
17 proceeding that the Facility would not have been sited in
18 Washington County except for its direct involvement.
19 This completely disregards the fact that Gulf Power,
20 acting in accordance with its economic development
21 policy, offered to participate in a countywide initiative
22 to raise the necessary funding to purchase the land to
23 donate to the DOC.

24 A more accurate characterization of GCEC's
25 involvement is that GCEC, acting for its own benefit,

1 paved the way for Washington County's effort to obtain
2 the Facility by undertaking actions that are improper and
3 clearly contrary to national energy policy and not in the
4 best interests of either Florida's ratepayers or its
5 taxpayers.

6

7 Q. What support can you provide for your contention that
8 GCEC's actions in this matter are improper and clearly
9 contrary to national energy policy?

10 A. The Rural Electrification Loan Restructuring Act of 1993,
11 which was signed into federal law on November 1, 1993,
12 amends the Consolidated Farm and Rural Development Act by
13 adding the following:

14 " (a) Prohibition -- Assistance under any rural
15 development program administered by the Rural
16 Development Administration, the Farmers Home
17 Administration, the Rural Electrification
18 Administration, or any other agency of the
19 Department of Agriculture shall not be conditioned
20 on any requirement that the recipient of such
21 assistance accept or receive electric service from
22 any particular utility, supplier, or cooperative.

23 (b) Ensuring Compliance -- The Secretary shall
24 establish, by regulation, adequate safeguards to
25 ensure that assistance under such rural development

1 programs is not subject to such a condition. Such
2 safeguards shall include periodic certifications and
3 audits, and appropriate measures and sanctions
4 against any person violating, or attempting to
5 violate, the prohibition in section (a).

6 (c) Regulations -- Not later than 6 months after the
7 enactment of this section, the Secretary shall issue
8 interim final regulations of ensure compliance with
9 sub-section (a).(emphasis added)."

10

11 Q. What is the attitude of the REA with respect to this
12 federal legislation?

13 A. It is a matter of public record that when the Rural
14 Electrification Loan Restructuring Act was being
15 considered by Congressional subcommittees, a time period
16 that is contemporaneous with the consummation of the
17 interest free loan made by REA to GCEC for the benefit of
18 Washington County, the REA specifically sought to insert
19 a tying provision into the subject legislation such that
20 rural development grants would be made only in the areas
21 which were served by rural electric cooperatives. Such
22 legislation, if enacted, would have legitimized a common
23 practice of the rural electric cooperative in their
24 efforts to obtain new customers.

25

1 Contrary to the desires of REA and its constituents,
2 the efforts to legalize tying relationships was not only
3 soundly rejected by Congress, but by contrast, the final
4 form of the legislation specifically provided that such
5 linking relationships would be forbidden.

6 The REA's contempt for the anti-tying legislation is
7 further illustrated by the fact that, notwithstanding
8 section (c) of the 1993 legislation as set forth above,
9 as of the date of filing of this rebuttal testimony, more
10 than eleven months following the enactment of the subject
11 legislation, the REA has yet to issue final regulations
12 to assure compliance with this federal law.

13

14 Q. What conclusions do you draw from the information
15 presented above?

16 A. At the time that the interest free loan was made to
17 Washington County, REA was vigorously supporting federal
18 legislation that would legalize tying relationships
19 between rural economic development assistance and service
20 by rural electric cooperatives. Although there is no
21 explicit condition in the loan documentation which
22 establishes a tying relationship between the interest
23 free loan and service by GCEC, there can be no doubt that
24 a tying relationship was implied. Soon thereafter,
25 despite REA's efforts, Congress specifically established

1 federal law that outlawed the very conditions that REA
2 sought to impose in effecting its rural economic
3 development responsibilities.

4 GCEC's actions in obtaining an REA loan for the
5 benefit of Washington County, an activity which GCEC
6 contends should weigh in its favor in deciding the
7 subject service dispute, is in fact an activity which if
8 undertaken today could violate federal law. Furthermore,
9 Congress has issued a clear signal that activities that
10 attempt to tie the provision of rural economic
11 development assistance to the right to provide electric
12 service, as in the case of both the \$45,000 grant made by
13 GCEC to Washington County and GCEC's agreement to waive
14 reimbursement of \$42,000 in costs, are contrary to the
15 stated public policy of the United States of America.

16 It would be inimical for this Commission to resolve
17 the electric service dispute that is the subject of this
18 proceeding in favor of a rural electric cooperative whose
19 primary claim of entitlement to provide the service is
20 that it violated the express public policy of the United
21 States in order to obtain the inside track to provide the
22 electric service now under dispute.

23

24 Q. Do you have any concluding comments?

25 A. Yes. The Commission should settle this dispute by

1 utilizing the same criterion used in all previous
2 territorial disputes before it; that is, the best
3 interests of all of Florida's citizens. These interests
4 will be served most effectively if the Commission's
5 decision reflects a properly performed analysis of lease
6 increment cost. Using this standard, Gulf Power is
7 better qualified to provide the service which is the
8 focal point of this proceeding.

9 Further, the Commission should not use this
10 proceeding, which focuses on a single service
11 dispute, as an opportunity to establish guidelines
12 which will preclude further service disputes or
13 dampen the competitive influences which will provide
14 the greatest ultimate benefit to Florida's electric
15 consumers.

16
17 Q. Does this conclude your rebuttal testimony?

18 A. Yes, it does.
19
20
21
22
23
24
25

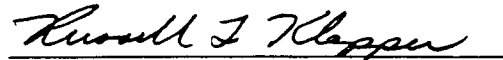
AFFIDAVIT

STATE OF FLORIDA

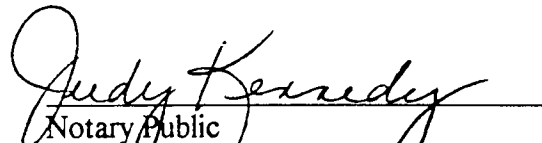
COUNTY OF ESCAMBIA

Before me the undersigned authority, personally appeared Russell L. Klepper, who being first duly sworn, deposes and says that he is the Principal of Rawson, Klepper & Company; that the foregoing is true and correct to the best of his knowledge, information and belief.

He is personally known to me.


Russell L. Klepper

Sworn to and subscribed before me this 7th day of October, 1994.


Notary Public
State of Florida at Large

JUDY KENNEDY
Notary Public - State of Florida
My comm. expires Feb. 23, 1997
Comm. No. CC 261534

FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 930885-EU

GULF POWER COMPANY

Witness: R. L. Klepper

Exhibit No: _____ (RLK-1)

Summary of Professional Credentials

Consisting of 4 pages

Rawson, Klepper & Company

Utility and Energy Consulting Services

10933 Crabapple Road
Suite 105
Roswell, Georgia 30075

(404) 641-7708
FAX (404) 641-1363

RUSSELL L. KLEPPER

SUMMARY OF PROFESSIONAL CREDENTIALS

Mr. Klepper is the founder and principal of Rawson, Klepper & Company, a utility and energy consulting services firm established in February of 1984. With a strong academic background and seventeen years of experience as a utility practitioner and over consultant, Mr. Klepper specializes in the areas of energy economics, utility finance and planning, ratemaking, and analysis and decision making in a regulated or transitory environment.

PROFESSIONAL INTERESTS

Mr. Klepper prepares and presents public and in-house seminars and advises utilities, utility constituents, and other interested parties on matters related to analysis of capital expenditures alternatives, acquisition and allocation of capital, strategic, financial, and integrated resource planning, and determination of revenue requirements and rate structuring in an increasingly competitive utility environment. He is a noted writer and speaker in the areas of privatization of utility operations and the impacts arising from federal participation in the electric industry.

In addition, Mr. Klepper has prepared and presented reports on topics such as Strategic Issues in Utility Planning, Utility Service Obligations in a Changing Environment, Competition within the Utility Industry, Co-Ownership of Utility Assets, Resource Recovery and Waste Utilization, Cogeneration and Independent Power Production, Transmission Access and Pricing, Determination of Costs in Railroad Ratemaking, and Fuel Acquisition and Transportation.

PROFESSIONAL ACTIVITIES

Instructor of Economics and Money and Banking. American Institute of Banking, 1974-75.

Expert Witness on Financial and Regulatory matters.
Interstate Commerce Commission, 1979-81.
Utah Public Service Commission, 1986.
Kentucky Public Service Commission, 1993-94.
Florida Public Service Commission, 1994.

Southeastern Electric Exchange. Member, Finance Committee, 1982-83.

RLK-1

Financial Management Association. Industry Reviewer of utility related presentations. 1983 Southeastern Conference.

Edison Electric Institute. Member, Committee on Electric Power Ownership Alternatives, 1983-84. Presenter of "A Strategic View of the 1990s" to EEI Strategic Planning Committee, 1989.

Southeastern Regional Public Utilities Conference. Presenter of "A Viewpoint on Utility Privatization". 1990.

The Management Exchange, Inc., faculty member, 1982-92. Co-Developer and Co-Presenter of national seminar "Capital Expenditure Analysis for Utilities". Developer and Presenter of national seminar "Financial Planning for Utilities."

Energy Bureau. Presenter of "Evaluating Financing Techniques." Conference on "Utility Financing for a Beleaguered Industry". 1984.

Public Utility Reports. Conference Moderator and Discussion Group Leader. "Managing Utilities in a Changing Environment." 1984.

The World Bank. Consulting Member of the Power Section Mission to PLN, the National Electric Utility of the Republic of Indonesia, specializing in utility financial and strategic planning. 1987. Developer and Presenter of internal seminar "Financial Planning and Analysis for Underdeveloped Countries." 1989. Developer and Presenter of materials for "Seminar on Energy Policy and the Environment", presented in Ethiopia in collaboration with the United Nations Economic Commission for Africa and in Egypt in collaboration with the Organization of Energy Planning. 1992.

United States Energy Association. Developer and Presenter of Materials at "Seminar on Natural Monopolies: Regulation, Structure and Pricing Decisions", a conference conducted in Vienna, Austria, for electric utility executives from Hungary, Poland, and the Czech and Slovak Republics. Jointly sponsored by the World Bank and the U.S. Agency for International Development. 1992.

MONOGRAPHS

The Utah Transmission Proceeding: Public vs. Private Ownership - A Case Study. Prepared under contract with the Economics Division of the Edison Electric Institute. 1987.

Privatization: An Overview of Worldwide Experience with Implications for the Electric Utility Industry in the United States. Prepared under contract with the Public Policy Analysis Division of the Edison Electric Institute. 1988-89.

Discussion of Considerations and Recommendations for Appropriate Methodologies for Determining the Cost of Equity Capital for Independent Telephone Systems. Co-authored with Roger A. Morin. Prepared under contract with the Ontario Telephone Service Commission. 1989.

Review and Assessment of Recent Executive Branch Initiatives with Ownership Implications for the Electric Utility Industry in the United States. Prepared under contract with the Bulk Power Policy Group of the Edison Electric Institute. 1993.

An Overview of the Bonneville Power Administration: Its Purpose, Performance, and Prospects. Prepared under contract with the Bulk Power Policy Group of the Edison Electric Institute. 1994.

EDUCATIONAL HISTORY

Bachelor of Science in Business Administration,
Major in Economics, University of Florida, 1971.

Master of Business Administration, Major in Finance,
University of Florida, 1972.

Master of Professional Accountancy, Georgia State
University, 1980.

EMPLOYMENT HISTORY

First National Bank of Florida in Tampa, Investment Division.
Employed 1972. Assistant Cashier 1973-74. Assistant Vice
President 1974-76. Exercised responsibilities for liabilities
portfolio management, analysis of bank operations, and pricing
of deposit related bank services.

Georgia Power Company, Corporate Finance Department. Financial
Analyst 1977-81. Financial Services Manager 1981-84.
Participated in the financial planning process, special
financial projects, and the development and preparation of
rate filings. Later directed the evaluation of capital
expenditure alternatives, managed the administration of the
portfolio of outstanding capital instruments, and coordinated
the financial, regulatory, legal and marketing aspects of
raising of over \$1.2 billion in capital through the issuance
of preferred stock, first mortgage and pollution control bonds,
and other debt instruments.

RELATED BUSINESS ACTIVITIES

In November of 1987, Mr. Klepper participated in the founding and initially served as Director, Vice President and Chief Financial Officer of Bio-Gas Development, Inc. (BGD), a venture enterprise focusing on the development of economically viable waste energy recovery projects using proprietary environmental remediation technologies. In December of 1992, substantially all of BGD's assets were sold to Methane Treatment Technologies, Inc. (MTec), which continues the effort to achieve the business objectives of BGD. For a period of one year, Mr. Klepper continued to serve MTec in the same professional capacities of Director, Vice President and Chief Financial Officer, and now continues his relationship with MTec in a consulting capacity.

FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 930885-EU

GULF POWER COMPANY

Witness: R. L. Klepper

Exhibit No: _____ (RLK-2)

August 11, 1987 Letter from DOC to Gulf Power

Consisting of 1 page



FLORIDA
DEPARTMENT of
CORRECTIONS

DIVISION

AUG 17 1987

Governor
BOB MARTINEZ

Office
Secretary
RICHARD L. DUGGER

1311 Winewood Boulevard, Tallahassee, Florida 32399-2500 • 904/488-5021

August 11, 1987

Mr. William C. Weintritt
Manager of Division Operations
Gulf Power Company
P. O. Box 1151
Pensacola, FL 32520

Dear Mr. Weintritt:

Re: Holmes Correctional Institution

After meeting with representatives of both Gulf Power Company and West Florida Electric Coop, we have selected Gulf Power Company to provide electrical service for Holmes Correctional Institution.

Based on information provided by both companies regarding reliability, right-to-serve and service capabilities, we were unable to discern any appreciable differences. The estimated cost savings of \$16,000 annually for the estimated load requirements for the correctional institution was the decisive factor in selecting Gulf Power.

Please insure that you are able to provide temporary service by August 17, 1987 and that full service is on site by October 1, 1987. It is imperative that you advise this office in writing on or before August 17, 1987 that you can comply with both dates.

We look forward to working with you in this project.

Sincerely,

Bill Thurber
Assistant Secretary
Office of Management and Budget

BT/rgke

Ron Kowalski

RLK-2

FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 930885-EU

GULF POWER COMPANY

Witness: R. L. Klepper

Exhibit No: _____ (RLK-3)

Deposition Transcript of Ron Kronenberger

TO BE SUPPLIED WHEN AVAILABLE

FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 930885-EU

GULF POWER COMPANY

Witness: R. L. Klepper

Exhibit No: _____ (RLK-4)

Agreements between GCEC and AEC

Consisting of 4 subparts

Exhibit No: _____ (RLK-4)

PART A

Consisting of 1 page

#111

U.S. DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION

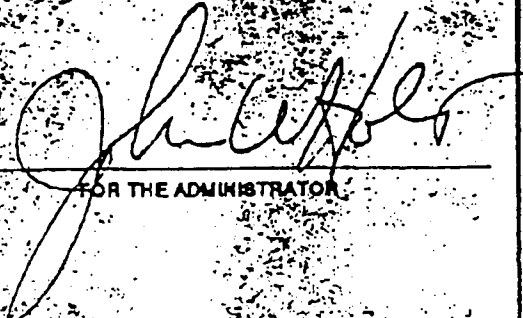
REA BORROWER DESIGNATION Alabama 42 MONTGOMERY

THE WITHIN Amendment to Contract for Wholesale Power Service (11/2/92) and

Supplemental Agreement to Contract for Wholesale Power Service (11/2/92) between

Alabama Electric Coop., Inc. and Gulf Coast Electric Cooperative, Inc.

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE
TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE
PURPOSES OF SUCH CONTRACT.



FOR THE ADMINISTRATOR

DATED

6/7/93

Exhibit No: _____ (RLK-4)

PART B

Consisting of 3 pages

**AMENDMENT
TO
CONTRACT FOR
WHOLESALE POWER SERVICE**

This Agreement is made as of November 2, 1992, by and between ALABAMA ELECTRIC COOPERATIVE, INC., an Alabama cooperative corporation (hereinafter referred to as "Supplier") and GULF COAST ELECTRIC COOPERATIVE, INC., a Florida rural electric cooperative corporation (hereinafter referred to as "Consumer").

WITNESSETH:

WHEREAS, the Supplier presently owns and operates an electric generation plant and transmission system, and proposes to construct or acquire additional electric generating plant and transmission facilities and may purchase or otherwise obtain power and energy all for the purpose, among others, of supplying electric power and energy to borrowers, including the Consumer, from the Rural Electrification Administration which are member-owners of the Supplier; and

WHEREAS, the Supplier has financed and may, in the future, finance such construction or acquisition in whole or in part through loans made or guaranteed by the United States of America (hereinafter referred to as the "Government"), acting through the Administrator of the Rural Electrification Administration (hereinafter referred to as the "Administrator") and through loans from other lenders with whom the Government has agreed, pursuant to Section 306 of the Rural Electrification Act, to share collateral for loans made or guaranteed by them to the Supplier (said loans from the Government or others hereinafter referred to as the "Loans"); and

WHEREAS, the indebtedness created by such loans and loan guarantees made by the Government is evidenced, and, with respect to future indebtedness, shall be evidenced by certain notes (hereinafter collectively referred to as "Notes") secured by that Supplemental Mortgage and Security Agreement, dated July 27, 1984, made by and between the Supplier, the Government, and the National Rural Utilities Cooperative Finance Corporation (said Supplemental Mortgage and Security Agreement as it may be amended, supplemented, and/or restated from time to time being hereinafter referred to as the "Mortgage"); and

WHEREAS, the Supplier and Consumer have previously entered into a Contract For Wholesale Power Service and a Supplemental Agreement thereto, both dated October 20, 1970, wherein Consumer agrees to purchase from Supplier all of the electric power and energy which Consumer shall require and has, in addition, appointed Supplier as its agent and attorney in fact

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6/17/92

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RLK-4

PART B

to obtain from others all or any portion of said power requirements for Consumer's system so as to place full power supply responsibilities upon Supplier, and

WHEREAS, the Contract For Wholesale Power Service, as amended, other similar agreements with Supplier's other member-owners, and payments due thereunder are pledged and assigned to secure the Notes as provided in the Mortgage; and

WHEREAS, the Government is relying on this Agreement, similar contracts between the Supplier and other borrowers from the Rural Electrification Administration, and similar contracts between the Supplier and others to assure that the Notes are repaid and the purposes of the Rural Electrification Act of 1936, as amended, are carried out and the Supplier and Consumer, by executing this Agreement, acknowledge that reliance;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained and the approval by the Administrator of this Agreement, the parties hereto agree that the Contract For Wholesale Power Service, made as of October 20, 1970, shall be amended by the inclusion of the following provisions:

16. Transfers by the Consumer. During the term of this Agreement, so long as any of the Notes are outstanding, the Consumer will not, without the approval in writing of the Supplier and the Administrator, take or suffer to be taken, any steps for reorganization or to consolidate with or merge into any corporation, or to sell, lease or transfer (or to make any Agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. Supplier will not unreasonably withhold or condition its consent to any such reorganization, consolidation, or merger, or to any such sale, lease, or transfer (or any agreement therefor) of assets. Supplier will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other member-owners of the Supplier or impair the ability of the Supplier to repay its Loans in accordance with their terms. Notwithstanding the foregoing, the Consumer may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or to sell, lease, or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the Supplier's consent, so long as the Consumer shall pay such portion of the outstanding indebtedness of the Supplier's Notes, as shall be determined by the Supplier with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and Supplier may require either (i) to eliminate any adverse effect that such action seems likely to have on the rates of the other member-owners of the Supplier or (ii) to assure that the Supplier's ability to repay the Loans and other obligations of the Supplier in accordance with their terms is not impaired. Any payment owed under clause (ii) of the preceding sentence which represents a portion of the Supplier's indebtedness on Notes shall be paid by the Consumer directly to the holders of such Notes for application by them as prepayments in accordance with the loan documents relating thereto.

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17. Remedies. The Consumer and Supplier agree that the failure or threatened failure of the Consumer to comply with the terms of paragraph 16, above, will cause irreparable injury to the Supplier and to the Government which cannot properly or adequately be compensated by the mere payment of money. The Consumer agrees, therefore, that in the event of breach or threatened breach or paragraph 16 of this Agreement by the Consumer, the Supplier, in addition to any other remedies that may be available to it judicially, shall have the right to obtain from any competent court a decree enjoining such breach or threatened breach of said paragraph 16 or providing that the terms of said paragraph 16, above, be specifically enforced.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all in six counterparts of which each shall be deemed as an original on the date first above written.

ALABAMA ELECTRIC COOPERATIVE, INC.

By: [Signature]
Its President

ATTEST:

By: [Signature]
Its Secretary
act

GULF COAST ELECTRIC COOPERATIVE, INC.

By: [Signature]
Its President

ATTEST:

By: [Signature]
Its Secretary

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6/17/92

Exhibit No: _____ (RLK-4)

PART C

Consisting of 2 pages

SUPPLEMENTAL AGREEMENT
TO
CONTRACT FOR WHOLESALE POWER SERVICE

This SUPPLEMENTAL AGREEMENT is made as of November 2, 1992, by and between ALABAMA ELECTRIC COOPERATIVE, INC., an Alabama cooperative corporation (hereinafter called the "Seller") and GULF COAST ELECTRIC COOPERATIVE, INC. (hereinafter called the "Member"), its successors and assigns, and the UNITED STATES OF AMERICA (hereinafter called the "Government") acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

WHEREAS, the Seller and the Member have entered into a Wholesale Power Contract for the purchase and sale of electric power and energy dated October 20, 1970, as supplemented and amended (hereinafter called the "Power Contract"); and

WHEREAS, the execution of the Power Contract, Amendments and Supplements, thereto, between the Member and the Seller is subject to approval of the Administrator under the terms of the loan contracts entered into with the Administrator by the Seller and the Member, respectively; and

WHEREAS, the Government is relying on said Power Contract and similar contracts between the Seller and other Borrowers from the Rural Electrification Administration and between the Seller and its other member-owners to assure that the "Notes" referred to in the Power Contract are repaid and that purposes of the Rural Electrification Act of 1936, as amended, are carried out and the Seller and Member by executing this Supplemental Agreement, acknowledge this reliance;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained and the approval by the Administrator, the parties hereto agree as follows:

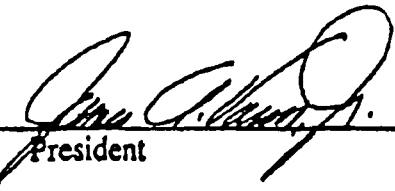
1. The Seller, the Member and the Administrator of this Supplemental Agreement, agree that if the Member shall fail to comply with any provision of the Power Contract, the Seller, or the Administrator, if the Administrator so elects, shall have the right to enforce the obligations of the Member under the provisions of the Power Contract by instituting all necessary actions at law or suits in equity, including, without limitation, suits for specific performance. Such rights of the Administrator to enforce the provisions of the Power Contract are in addition to and shall not limit the rights which the Administrator shall otherwise have as a third-party beneficiary of the Power Contract or pursuant to the assignment and pledge of such Power Contract and the payments required to be made thereunder, as provided in the "Mortgage" referred to in the Power Contract. The Government shall not, under any circumstances, assume or be bound by the obligations of the Seller under the Power Contract except to the extent the Government shall agree in writing to accept and be bound by such obligations.

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2. This Agreement may be simultaneously executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above mentioned.

ALABAMA ELECTRIC COOPERATIVE, INC.

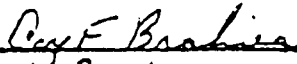
By: 
Its: President

ATTEST:

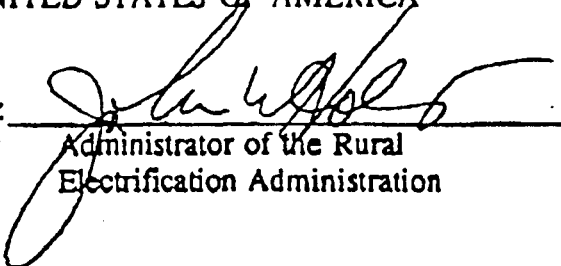
Its: Assistant Secretary

GULF COAST ELECTRIC COOPERATIVE, INC.

By: 
Its: President

ATTEST:

Its: Secretary

UNITED STATES OF AMERICA

By: 
Its: Administrator of the Rural
Electrification Administration

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6/05/92

Exhibit No: _____ (RLK-4)

PART D

Consisting of 2 pages

SENT BY JAMES VANN JR PRES/CLERK TO BOARD OF TRUSTEES

CERTIFICATE

I, Coy F. Brahier, do hereby certify that: I am the secretary of Gulf Coast Electric Cooperative, Inc. (hereinafter called the "Cooperative"), the following is a true and correct copy of the resolution duly adopted by the Board of Trustees of the Cooperative at the regular meeting held July 21, 1992, and entered in the minute book of the Cooperative; the meeting was duly and regularly called and held in accordance with the bylaws of the Cooperative; the attached form of Guarantee of Payment is a correct copy of the form thereof authorized by the Board of Trustees to be executed, and the following resolution has not been rescinded or modified:

WHEREAS, The Rural Electrification Administration (REA) has approved Alabama Electric Cooperative, Inc.'s (AEC) AA8 Loan, subject to certain conditions; and

WHEREAS, It is recognized that AEC will realize substantial debt service savings from the receipt of REA financing under the AA8 Loan, as compared to other sources of financing, thereby benefitting each of AEC's member-owners; and

WHEREAS, One of REA's AA8 Loan conditions requires each of AEC's member-owners to amend and supplement its Contract for Wholesale Power Service with AEC in substantially the same form as the Amendment and Supplemental Agreement to the Contract for Wholesale Power Service submitted for consideration to the Cooperative's Board of Trustees at this meeting; and

WHEREAS, it is recognized that it is in the best interest of the Cooperative, AEC, and AEC's other member-owners for the Cooperative to execute and deliver the Amendment and the Supplemental Agreement to the Cooperative's Contract for Wholesale Power Service with AEC.

THEREFORE, BE IT RESOLVED, That the Cooperative's Board of Trustees hereby authorizes its officers to execute and deliver, and directs the Cooperative's secretary to attest as many counterparts as shall be deemed advisable, the Amendment and the Supplemental Agreement to the Contract for Wholesale Power Service between the Cooperative and AEC in substantially the form of the Amendment and Supplemental Agreement to the Contract for Wholesale Power Service submitted to the Cooperative's Board of Trustees for consideration at this meeting; and

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PART D

BE IT FURTHER RESOLVED, That the officers of the Cooperative are hereby authorized, in the name and on behalf of the Cooperative, to execute all such instruments and do all such other acts, as in the opinion of the officer or officers acting, may be necessary or appropriate in order to carry out the purposes and intent of the foregoing resolution.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Cooperative this 1st day of December, 1992.

(Corporate Seal)

Coy F. Basheer
Secretary

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