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November 21, 1994

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

Re: Docket No. ~~950885~~-EU

Dear Ms. Bayo:

The original and fifteen (15) copies of Gulf Power Company's Post-Hearing Brief, Post-Hearing Summary of Positions and Proposed Findings of Fact and Conclusions of Law is submitted for filing in the above docket. Also enclosed is a double sided high density 3.5 inch diskett containing these documents in WordPerfect for Windows 6.0a format as prepared on a MS-DOS based computer.

ACK \_\_\_\_\_

AEA \_\_\_\_\_

APP \_\_\_\_\_

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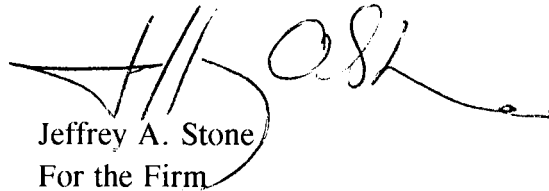
SEC \_\_\_\_\_

WAS \_\_\_\_\_

CTH \_\_\_\_\_

Please mark the enclosed extra copy of this letter with the date and time the material was accepted in your office for filing, and return same to the undersigned. Thank you for your assistance in this matter.

Very truly yours,

  
Jeffrey A. Stone  
For the Firm

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*Summary*  
DOCUMENT NUMBER-DATE  
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*Findings*  
DOCUMENT NUMBER-DATE  
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FPSC-RECORDS/REPORTING

*Brief*  
DOCUMENT NUMBER-DATE  
11826 NOV 22 94  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Resolve )  
territorial dispute with Gulf ) Docket No. [REDACTED]  
Coast Electric Cooperative, Inc. ) Filed: Nov. 22, 1994  
by Gulf Power Company. )  
\_\_\_\_\_)

POST-HEARING BRIEF OF GULF POWER COMPANY

Gulf Power Company ["Gulf Power", "Gulf", or "the Company"], by and through its undersigned attorneys, and pursuant to Rule 25-22.038(3), Florida Administrative Code, and in accordance with the Order Establishing Procedure in this docket, hereby submits this post-hearing brief.

INTRODUCTION

On September 8, 1993, Gulf Power Company filed a petition to resolve a territorial dispute with Gulf Coast Electric Cooperative ["GCEC" or "the Coop"] concerning the planned electric service to the site of the proposed Washington County Correctional Institution ["WCCI" or "the prison facility"] that is to be located in South Washington County on property adjacent to the intersection of Highway 279 and State Road 77. Gulf Power has (and had) existing three-phase distribution lines along Highway 77 and Highway 279 which are (and were) more than adequate to reliably serve the proposed prison facility. In contrast, in order to serve the prison facility, the Coop was required to construct new three-phase distribution facilities in

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the area, paralleling and duplicating Gulf Power's existing lines along Highway 279.<sup>1</sup> The Coop's new construction to serve WCCI was at a higher incremental cost than would be incurred by Gulf Power Company to provide equivalent service, service that would be provided without new construction of facilities in duplication of any belonging to the Coop.

The petition further stated that, based on information obtained from the Department of Corrections ["DOC"], Gulf Power's proposal for the provision of electric service to the prison facility reflected that charges for electric service to the DOC under Gulf Power's rates would be approximately \$23,000 lower on an annual basis than the charges for electric service would be under the Coop's rates. In addition, the proposed location of the prison facility at the intersection of Highway 279 and Highway 77 would allow the DOC to receive the benefit of Gulf Power's ability to serve its customers taking electric service from the Company's lines along those highways from either of two substations, the Company's substations at Vernon or at Sunny Hills.

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<sup>1</sup>See Map No. 4 in the Appendix to this brief ["Appendix"].

Based on applicable statutes, Commission rules and established case precedents regarding the resolution of disputes such as that presented in this case, it was and is apparent that Gulf Power is the appropriate electric utility to provide service to the Department of Corrections for WCCI. Nevertheless, the Coop proceeded to uneconomically duplicate Gulf's facilities along Highway 279 in order to serve the prison.

This dispute over the GCEC's uneconomic duplication of Gulf's existing facilities arose because the Coop was selected as the electric service provider for the DOC by Washington County. Washington County made this decision notwithstanding Gulf Power's lower incremental cost to serve, and lower rates for electric service. The County had received a grant of \$45,000 from the Coop to assist in the purchase of the property which in turn was donated to the DOC for construction of WCCI. Subsequent to the filing of the petition, Gulf learned that the Coop also made an interest free loan of \$308,000 to the County, incurred costs in excess of \$11,000 related to the processing of the loan, and agreed to absorb the cost of relocating an existing single-phase line on the site of the prison facility at an approximate cost of \$42,000. While all these actions directly benefited Washington County in its efforts to secure the prison, the Coop's actions

and agreement to absorb these costs is to the detriment of the Coop's customers, including the Department of Corrections, who will be forced to pay these costs through higher rates. Further, the expenditure of the Coop members' so-called "rural economic development" funds solely for the purpose of securing WCCI as a Coop customer is contrary to public policy as embodied in the Rural Electrification Loan Restructuring Act of 1993. For these reasons, as well as the fact that the actions of the Coop to influence the decision of the Washington County Commission as to which utility would serve WCCI have resulted in the uneconomic duplication of electric facilities in the area, the Florida Public Service Commission should not endorse the "buying" of electric loads by ratifying the County's choice of electric utility to serve WCCI.

As noted above, the Commission has historically decided territorial disputes based primarily on the relative incremental cost to each utility to serve the disputed customer, with the overall goal of preventing the uneconomic duplication of facilities. In addition, the Commission has considered which utility has traditionally provided service to the area, the nature of the area and the type of load to be served. Consistent with the avoidance of uneconomic duplication of electric

generation, transmission and distribution facilities, the Commission has considered the customer's choice of electric service provider only when all other factors are equal.

In this case, the relative impact of the relevant factors on the Commission's ultimate decision clearly favors Gulf Power Company. Gulf Power has invested millions of dollars in generation and transmission facilities to enable it to serve all of Washington County since 1926. The Company has developed an extensive distribution system in Washington County, and since 1971, has had three-phase distribution facilities immediately adjacent to and on two sides of the property which is the site of WCCI. These generation, transmission, and distribution facilities were (and are) more than adequate to serve the prison facility. Gulf's incremental cost of service would, therefore, have been minimal. Moreover, Gulf's rates are considerably lower than the rates charged by the Coop and would result in lower bills to the DOC on an annual basis. In contrast, the Coop (which until 1981 purchased all of its wholesale power from Gulf Power Company after Alabama Electric Cooperative began in 1958 to uneconomically duplicate Gulf Power's generation and transmission facilities designed to serve the area) had to construct approximately 4,000 feet of new three-phase distribution line

parallel to, and directly across the highway from, Gulf Power's existing three-phase distribution line on Highway 279.

All objective factors which are relevant to this dispute weigh so heavily in Gulf's favor that the Commission's determination should be clear. In an attempt to cloud these factors, the Coop has raised the issue of rural economic development. The Coop argues that it has not "bought" the load through its grants and loans to Washington County, but that its rural economic development efforts somehow "entitle" it to serve the prison. The record reflects, however, that the Coop's "gift" of \$45,000 to the County was neither unconditional nor for the goal of promoting economic development in South Washington County. Instead, the money was expressly given in exchange for the right to serve the facility. This condition is borne out by the fact that, notwithstanding the benefits of the facility to the economic growth of the County, the Coop expects to get its money back if it is not awarded the right to serve. For this reason alone, the \$45,000 grant, the \$308,000 REA loan, the \$11,500 loan processing costs, and the agreement to absorb approximately \$42,000 in relocation costs should be viewed not merely as enhancements to rural economic development, but as a blatant attempt by the Coop to buy the customer. As such, these

costs should properly be included as part of the Coop's incremental cost of service, which the Coop customers (including in this case, the taxpayers of the State of Florida if the Coop were to prevail) will ultimately have to absorb. By improperly influencing the initial decision as to which utility should serve the new prison, the Coop's financial inducements have contributed to the uneconomic duplication of Gulf Power's existing distribution facilities. The Commission should discourage actions such as the Coop's decision to uneconomically duplicate Gulf Power's facilities, in order for the Coop to serve WCCI at a higher incremental cost to serve and at higher rates, than Gulf Power.

Finally, the Coop has attempted to expand the scope of the area in dispute in this case to include all of South Washington County and unincorporated Bay County. Gulf Power strongly opposes consideration of any areas other than the site of the correctional facility itself because it simply is not in the best long term interest of current and future ratepayers in this area of the state to draw lines on the ground in advance of bona fide disputes. There are no other current disputes between these two parties in litigation before the Commission. Moreover, it has become increasingly rare for Gulf Power to become involved



in a dispute that could not be avoided or otherwise resolved with the other utility without the necessity of Commission intervention. In Gulf Power's experience, the location and capacity of existing facilities and the relative incremental cost to serve a customer have traditionally offered the best guidance in determining which utility should provide electric service to a disputed area. Here, the record is wholly inadequate to support a reasoned determination as to which utility should serve the broader territory covering either South Washington County or unincorporated Bay County. This fact was acknowledged by the Coop on cross examination by the Commission Staff.

The Commission should decline to arbitrarily award territory to either utility in this docket beyond the area identified in Gulf Power's petition as being in dispute. Instead, the Commission should retain the flexibility and discretion to make an individual determination of which utility is most capable of providing reliable electric service at the lowest incremental cost and without uneconomically duplicating existing facilities, based on the specific facts before the Commission if and when another dispute arises.

ISSUES AND POSITIONS

**ISSUE 1:** What is the geographical description of the disputed area?

**\*SUMMARY OF GULF'S POSITION:**

The disputed area is the area described in Gulf Power's Petition, that is, the site of the Washington County Correctional Facility, near the intersection of Highways 77 and 279 in south Washington County. The Commission should not exercise its jurisdiction over other geographical areas not currently in dispute.

DISCUSSION: The Commission's determination in this docket should be limited to the specific dispute identified in Gulf Power's petition, the electric service to the property on which WCCI is being developed. This is the only current dispute between the parties. [R. 65, 66-68, 79] The record contains no evidence which would support an award of territory to either the Coop or Gulf Power, outside of the site of the correctional facility itself. [R. 374] Further, no such determination is necessary. While the Commission and both utilities no doubt wish to avoid future territorial litigation, such litigation has actually been rare. Only six disputes between these parties have been litigated over the past 23 years. In fact, it has been nine years since either Gulf Power or the Coop has brought a dispute to the Commission for determination. [R. 67, 79]

Under current law, Gulf Power has the statutory obligation to serve any customer who requests service, subject to the rules and regulations of the Public Service Commission. [R. 161] Based on the guidance provided by the Commission through both its rules and its decisions in other litigated disputes, Gulf Power has been able to avoid potential disputes by extending service only when cost effective to do so without the uneconomic duplication of facilities.<sup>2</sup> [R. 67, 161-162, 166, 607, 611] Here, Gulf Power evaluated the circumstances that led to the Coop serving the prison and, based on the fact that Gulf Power had facilities already in place adequate to allow the Company to serve the new prison at a lower cost and at lower rates than the Coop and the fact that the Coop's construction of three-phase facilities along Highway 279 constitutes uneconomic duplication of Gulf Power's existing facilities had occurred, the Company decided that it was appropriate to bring this matter to the Commission's attention. [R. 66, 161-162, 166, 628]

While the Coop's position on this issue is that the

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<sup>2</sup>Although the Coop attempted to challenge Gulf witness Mr. Weintritt's understanding of Gulf Power's "system" for resolving territorial issues, Mr. Weintritt's testimony reflects that Gulf Power has a clear understanding of the Commission's policy in settling these disputes. [R. 88-89, 161-162, 166] In contrast, Mr. Norris, the Coop's general manager, testified that he was unfamiliar with the Commission's policy on this subject. [R. 343-344]

Commission should consider all of South Washington and Bay Counties as the "area in dispute", its own witness, Mr. Norris, acknowledged on cross examination that the record in this proceeding provides no basis for making a decision regarding such an enlarged area. [R. 374] The Coop's only request of the Commission with respect to this issue is that the "two parties be able to sit down and negotiate territory". [R. 372] It is clear that the Coop is attempting to leverage its improper conduct in this case as a tool to cause the Commission to pressure the parties to the bargaining table. If the Commission were to grant the Coop's request to expand the scope of the area in dispute in this case, then the Commission would be rewarding/endorsing the very kind of misconduct which the Commission's policy against uneconomic duplication is intended to prevent.

The Commission has ample evidence before it concerning the respective utilities' facilities, comparative costs, reliability, and rates, under which to make an informed decision regarding the right to serve the limited area actively in dispute, the property on which WCCI is being built. As a result of the absence of such specific information about broader areas, the Commission should decline to award either utility the right to serve other areas not currently involved in an active dispute.

**ISSUE 2:** What is the expected customer load, energy, and population growth in the disputed area?

**\*SUMMARY OF GULF'S POSITION:**

The expected customer load, energy and population growth in the disputed area as identified in Gulf's position on Issue 1 is not expected to be significant. Gulf Power has more than adequate reserve capacity to serve any such growth.

**DISCUSSION:** The disputed area is the site of WCCI. The anticipated load and customer growth in the vicinity of WCCI is not anticipated to be substantial, and will probably be primarily residential with some associated small commercial development.

[R. 164] The reserve capacity of Gulf Power's Vernon and Sunny Hills substations, either of which is capable of serving the correctional facility site, is more than adequate to provide reliable electric service to the facility for the foreseeable future. [R. 69-70]

**ISSUE 3:** Which utility has historically served the disputed area?

**\*SUMMARY OF GULF'S POSITION:**

Neither utility has historically served the WCCI site. Gulf Power has served Washington County since 1926, and has had three-phase distribution facilities in place adjacent to the disputed area since 1971. Before 1981, all electrical service in Washington County was provided by Gulf Power either at wholesale or retail.

DISCUSSION: Both utilities have historically served customers in Washington County. Gulf Power first began providing service in 1926, in Chipley, Florida, the county seat for Washington County.

[R. 68] Since that time, Gulf Power has made significant investments in generation, transmission, and distribution facilities to serve its customers in Washington County. [R. 69, 655] In fact, essentially all electricity in Washington County was provided by Gulf Power at either the retail or the wholesale level until 1981, when the Coop terminated its wholesale contract with Gulf Power and began buying power exclusively from Alabama Electric Cooperative. [R. 68, 596, 604]

Since 1971, Gulf has had three-phase distribution facilities adjacent to and down two sides of the property which is the site of the correctional facility. [R. 66] Gulf's distribution facilities serve a Department of Transportation traffic signal at the intersection of Highways 279 and 77, directly south of and adjacent to the property on which WCCI is being developed, and also serve residential and commercial customers along both highways both north and west of the site. [R. 655] Gulf Power currently serves in excess of 500 customers within a five-mile radius of the facility site. [R. 110]

Gulf Power's existing facilities were capable of providing service to the prison facility with no new construction. The Coop's existing facilities were completely inadequate to provide the electric service required by WCCI. The Coop's existing facilities had to be removed and new expanded facilities built in order for the Coop to be able to provide the required level of service to the prison facility. [R. 69-72, 78, 80, 95-96, 166-168, 336, 398]

The Coop would have the Commission determine that the mere existence of its relatively inexpensive single-phase distribution lines in the area preempts service to WCCI by Gulf Power's existing three-phase distribution facilities on the highway right-of-way immediately adjacent to two sides of the subject property. Gulf's right to serve the area has been long established by the Courts and this Commission.<sup>3</sup> Historical

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<sup>3</sup>Gulf Power's right to serve the Sunny Hills subdivision was upheld by the Circuit Court of Washington County in its Final Judgment of April 5, 1971, Case No. 71-563; per curiam affirmed, 259 So.2d 794 (Fla. 1st DCA 1972). The Commission has subsequently acknowledged Gulf Power's historical service in this same area in Order No. 15322, issued November 1, 1985 in Docket No. 850048-EU, In re: Petition of West Florida Electric Cooperative Association, Inc. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, Florida, when it stated ". . . we conclude that Gulf Power has historically served the adjacent area of Sunny Hills subdivision and should not be prohibited from serving Buckhorn Creek Acres". See also Commission Order No. 16105, issued May 13, 1986, in Docket No. 850247-EU ("Paradise Lakes subdivision").

service to an area has been, and should continue to be, determined by the utilities' investment in generation, transmission, and distribution facilities sufficient to serve the area and loads in dispute. Gulf Power's facilities in the area, which have been in place for more than twenty-three years, are more than adequate to serve the prison. Until it duplicated Gulf Power's three-phase facilities along Highway 279, the Coop's facilities were not adequate to provide the service required by WCCI.

The Commission should determine this issue in favor of Gulf Power, based on the Company's historical provision of electric service in Washington County and the location and type of its existing distribution facilities which were (and are) adequate to meet the service requirements of the DOC thereby allowing Gulf Power to provide service at the lowest incremental cost.

**ISSUE 4:** What is the location, purpose, type and capacity of each utility's facilities existing prior to construction of facilities built specifically to serve the correctional facility?

**\*SUMMARY OF GULF'S POSITION:**

Gulf Power's existing generation, transmission and distribution facilities adjacent to the disputed area were capable of providing reliable service to the facility with no additions. The Coop was required to construct a new three-phase line along Highway 279 specifically to serve the facility.



DISCUSSION: As discussed in connection with the previous issue. Gulf Power would not be required to build any new facilities other than service drops to specifically serve the correctional facility. The Company's existing facilities are more than adequate to provide the required service. These facilities consist of three-phase, 25 kv lines bordering the correctional facility site on both Highway 279 and Highway 77. [R. 66, 69] The primary distribution line along Highway 279 serves customers along and off of the highway and allows the Vernon substation to provide backup capability to the Sunny Hills subdivision and other loads in south Washington county. [R. 83-84, 158] Again, the right of Gulf Power to have this line and to serve customers from it was upheld initially by the Circuit Court in the Sunny Hills case and subsequently by this Commission in past disputes. In re: Petition of West Florida Electric Cooperative Association, Inc. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, Florida, Docket No. 850048-EU, Order No. 15322, (issued 11/1/85) ["Buckhorn Creek Acres"]; In re: Petition of Gulf Coast Electric Cooperative to resolve territorial dispute with Gulf Power Company in Washington County, Docket No. 850247-EU, Order No. 16105 (issued 5/13/86) ["Paradise Lakes

subdivision"]. Gulf Power's distribution lines on Highway 279 and Highway 77 provide dual feeds from either the Vernon or the Sunny Hills substations and are adequate to meet the needs of Gulf's existing customers and the Department of Corrections at WCCI. [R. 69-70]

Prior to the Coop's construction of duplicate three-phase facilities solely to serve WCCI, the Coop's existing facilities consisted of a radial three-phase line running along the east side of Highway 77 (across the width of the highway from both the prison facility site and Gulf Power's three-phase line), and a single-phase line across the facility site which had to be removed in order to accommodate the construction WCCI. [R. 70-72]

**ISSUE 5:** What additional facilities would each party have to construct in order to provide service to the correctional facility?

**\*SUMMARY OF GULF'S POSITION:**

Gulf Power would not have to construct lines or add any generation, transmission, or distribution capacity, to provide the facility with three-phase electric service. The Coop had to construct approximately 4,000 feet of three-phase line along Highway 279, parallel to Gulf Power's existing line to serve the facility.

**DISCUSSION:** Gulf would not have to construct any new generation or transmission facilities in order to serve the Department of Corrections at WCCI, nor would it have to construct any new

three-phase distribution facilities to reach the property on which WCCI is located. Gulf Power had existing three-phase distribution lines along both Highway 279 and Highway 77 on the same side of the highways and immediately adjacent to the subject property. As a result, Gulf would not have to extend any new lines to reach the property. [R. 69, 78, 95] A service drop into the property from the highway would have been the only additional construction required to provide the service the Department of Corrections indicated it would accept. [R. 73, 95-96]

In contrast, the Coop did not have facilities in place which would have been adequate to provide the three-phase service required by the DOC. [R. 70-72, 78, 167, 336, 398] Instead, the Coop had to uneconomically duplicate Gulf's existing three-phase facilities by constructing approximately 4,000 feet of new three-phase line along Highway 279 in order to reach the Department's designated path to the point of service. [R. 72, 80, 166-168] That new line runs parallel to Gulf Power's existing line which is (and was) located on the same side of Highway 279 as the correctional facility site. [R. 72, 78] In fact, in order for the Coop to serve the prison from its three-phase line along Highway 77, GCEC would have had to cross Gulf Power's three-phase

line on that same highway since Gulf Power's existing three-phase line is also on the same side of the highway as the prison site.

[R. 167] The construction by the Coop of any additional three-phase lines would have been wholly unnecessary if Gulf Power was the electric service provider to the prison facility. Any such construction, especially given the fact that Gulf Power offers lower rates for electric service as well as lower incremental cost to serve, constitutes the uneconomic duplication of existing facilities. [R. 78, 80, 66, 180-181] Further, the record reflects (and the Coop concedes) that the cost of upgrading the existing single-phase line to three-phase would have been unnecessary to serve existing customers. [R. 80, 261]

**ISSUE 6:** Is each utility capable of providing adequate and reliable electric service to the disputed area?

**\*SUMMARY OF GULF'S POSITION:**

Yes. However, Gulf Power has better capability to provide adequate and reliable service due to its excellent history of transmission and distribution reliability, and dual feed capability from the Vernon and Sunny Hills substations.

**DISCUSSION:** Gulf Power does not dispute that the Coop is capable of providing adequate service to the facility. Nevertheless, Gulf Power contends that its quality of service, due in part to the ability to serve the disputed area from either of two

substations from two different directions, is inherently more reliable than that which the Coop is capable of providing. The inherent advantage of such dual feed capability was recognized by the Commission in a case involving Florida Power & Light Company ["FP&L] and the Peace River Electric Cooperative ["PRECO"]. In that case, Docket No. 840293-EU, the Commission found that FP&L's dually fed distribution lines would ". . . significantly enhance the reliability of service" over PRECO's radially fed line."

See, Order No. 15210, (issued 10/8/85)

The Coop's emphasis on transmission line reliability is misplaced. [R. 658-659] Both utilities have adequate transmission reliability. It is the issue of distribution reliability, however, that gives Gulf Power the clear advantage. Gulf Power's existing three-phase distribution lines along Highway 279 and Highway 77, virtually surrounding the facility site, can be served from either the Vernon or the Sunny Hills substations, both of which have adequate capacity to serve the facility for the foreseeable future. [R. 69-70] In terms of reliability, this means that in the event of a fault in the distribution line from one of the substations serving the facility, Gulf Power is able to merely switch power to the alternate direction and continue serving the prison from the

other substation. [R. 71, 173, 658-659] In contrast, the Coop's distribution line from Crystal Lake substation to Highway 279 is a radial line with a 5.4 mile exposure. [R. 396, 403] If, for instance, the line from the Crystal Lake substation should go down, WCCI could not be served until repairs to this line could be made. [R. 71, 377, 403, 659] The Coop's own witness stated that this could take as long three hours. [R. 403]

At the hearings in this docket, Mr. Weintritt was questioned regarding the length of time it would take for Gulf Power to make the switch described above. Because Gulf Power utilizes manual switching, it is true that its employees would physically have to travel to the site and manually switch to the alternate source. This fact is completely irrelevant to the issue of reliability. While under the worst-case scenario it could take as long as 30 to 40 minutes to travel to the site, once there Gulf Power's crew could restore power immediately. [R. 125, 177] Conversely, since its distribution lines are not dually fed, the Coop would be required to physically repair the damaged line, a process that could take as long as several hours. [R. 177, 403, 659] In fact, remotely operable motorized switching confers no time advantage over manual switching, since it is necessary and prudent to locate the trouble source before

reenergizing a line in order to ensure that there is no danger to persons or property in doing so. [R. 178]

**ISSUE 7:** What would be the cost to each utility to provide electric service to the correctional facility?

**\*SUMMARY OF GULF'S POSITION:**

Gulf Power's total cost of providing electrical service to the facility would be approximately \$53,000. Gulf Power estimates that the Coop's total cost to serve the facility would be more than \$180,000.

DISCUSSION: The record in this docket demonstrates, and in fact common sense dictates, that Gulf Power's incremental cost to serve the correctional facility is significantly lower than the Coop's. This is true for generation, transmission, and distribution costs. [R. 604] Gulf Power's existing generation and transmission facilities are more than adequate to provide the facility with reliable service with no new construction. [R. 69-70] More significantly, Gulf Power Company, unlike the Coop, would not have to construct new three-phase distribution facilities in order to reach the property and serve WCCI.

Although the Coop witnesses have made a concerted effort to confuse this issue, the simple fact is that the Coop constructed approximately 4,000 feet of three-phase, 25 kv primary distribution feeder line blatantly and uneconomically

duplicating Gulf Power's existing facilities. [R. 66, 71-72, 78, 261] Gulf Power's three-phase, 25 kv primary distribution feeder line, which adjoins the site of the correctional facility on the same side of Highway 279, has been in place since 1971. [R. 66, 69, 169] The Coop's total cost of constructing 4,000 feet of duplicative distribution facilities is in excess of \$64,000. [R. 440; Exh. 10; Exh. 14; Exh. 38]<sup>4</sup> The Coop's attempt to confuse this issue cannot cloud the fact that, on this basis alone, Gulf Power's initial cost to serve the correctional facility is over \$64,000 less than the Coop's. [R. 66, 78, 80, 180-181]

Exhibit 10, admitted at the hearings in this docket over Gulf Power's objection, completely misrepresents the comparative costs to serve the prison facility. First, as to the Coop's own costs, GCEC's witness Mr. Dykes testified that the costs shown on Exhibit 10 only represented the Coop's cost incurred to date, and not the total cost to provide service.<sup>5</sup>

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<sup>4</sup>The facilities described as single-phase equivalent along CR 279 [\$36,996.74], plus the three-phase to primary metering point [\$18,540.92] and the additional three-phase along CR 279 from the main entrance road to the staff housing road [\$9,155.86] sum to a total of \$64,693.52. [Exh. 10; Exh 38]

<sup>5</sup>Mr. Gordon testified that permanent service to the facility would not be completed for another 18 to 24 months following the October, 1994 hearings in this docket. [R. 265]



[R. 448-450] In its response to a request for a late filed exhibit made by Gulf Power, the Coop now estimates that it will incur an additional \$17,914 in order to complete the project.

[R. 257; Exh. 14]<sup>6</sup> Even if, for the sake of argument, the Coop's understated and unsubstantiated incremental cost for it to serve the prison facility were accepted as being correct, the Coop's total cost would be \$124,007, well in excess of Gulf Power's \$53,051 total incremental cost to provide all of the requested service. [Exh. 14; Exh. 38] In Gulf Power's case, all of its incremental cost to provide the required service consists of distribution facilities built into the DOC's property from the highway. As noted by GCEC's witness Mr. Dykes, once they have reached the property with equivalent facilities both utilities would have incurred basically the same cost for construction of new facilities into the DOC's property from the highway.<sup>7</sup>

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<sup>6</sup>Although the Coop provided this estimate as part of exhibit 14 (late filed), GCEC continues to refuse to provide supporting information such as the estimated number of feet of primary cable necessary for completion. It is this specific information which Gulf Power requested be provided via exhibit 14. [see R. at 25]

<sup>7</sup>In response to a question about what Gulf Power would have had to do to serve the DOC site, Mr. Dykes stated ". . . they would have had to construct new facilities down the entrance road to the point of primary service, just as we did. Their costs would be the same as ours, except for the width of CR 279." [R. 401 (emphasis added)]

In addition to understating its own costs, the Coop attempts to mislead the Commission concerning Gulf Power's cost to provide both temporary and permanent service. The figure the Coop reports as Gulf Power's cost to provide temporary service is actually the cost Gulf Power would have incurred in providing temporary service at the same locations and under the same terms as the Coop. The record is clear that the DOC routinely negotiates points of temporary service with the electric service provider, and that Gulf Power could have provided temporary service from its existing facilities at a lower cost. [R. 142, 181-182, 225-226, 409-410, 657; Exh. 38]

In addition, as the Coop is well aware from discovery conducted in this docket, the costs it includes on its tabulation of Gulf Power's cost to serve as "Vernon upgrade" and "Voltage regulators", are completely unrelated to the correctional facility. [R. 115-116; Exh. 27; Exh. 38] As Gulf Power witness Mr. Weintritt unequivocally stated, the Vernon upgrade (and associated voltage regulators) ". . . has nothing to do with this prison. We began it before anybody dreamed of this prison." [R. 116] The fact is, the Coop has offered no evidence to support its allegation that the cost of the Vernon substation upgrade is related to the prison. Simple logic dictates otherwise since the

work was planned before there were any discussions about WCCI and in fact Gulf has completed the work notwithstanding the fact that it is not yet assured that it will be allowed to serve the prison facility. When the costs associated with the Vernon upgrade are appropriately removed from the tabulation of Gulf Power's incremental cost to serve WCCI, even the Coop's own exhibits reflect that Gulf Power's total cost would be less than \$74,000, a figure over \$50,000 less than the Coop's estimated costs.

[Exh. 10; Exh. 14]

Finally, the Coop's estimate of its cost to serve the prison does not include the payments made to Washington County in order to obtain the customer. While it is important to note that, even without inclusion of these payments, Gulf Power's incremental cost to serve the facility remains lower than the Coop's, those payments were made for the specific purpose of securing this customer and should be considered in estimating the Coop's total cost of service. [Exh. 10; Exh. 27; Exh 38] The testimony of Mr. Gordon is clear that the \$45,000 grant to the County was considered an inducement for the customer to accept the Coop's higher rates. [R. 276] The testimony of Mr. Norris leaves no doubt that this grant was made, not for supporting rural economic development generally, but for the specific purpose of obtaining the customer. [R. 295, 308; Exh. 16]

The Coop has attempted to denigrate Gulf Power's rural economic development activities while lauding its outright payments of Coop member funds to the County in order to obtain the ability to serve the prison. The record, however, consistently reflects Gulf Power's significant involvement in community-wide economic development activities, in both rural and urban areas. [R. 597-599] In this specific instance, Gulf Power was willing to participate in a community-wide effort to locate the facility in Washington County, but was unwilling to enter into a "bidding war" with the Coop for the right to serve the customer. [R. 600, 605, 619] The Coop's effort to "buy" the load through its "economic development" grants and loans effectively preempted any effort or opportunity to establish a community wide fund raising campaign.

In contrast, it is clear that the Coop's activities in this regard were for the sole purpose of obtaining WCCI as a customer. Mr. Norris' claims that the Coop's rural economic development policy is to "enable people to acquire jobs in manufacturing, industrial and commercial type professions in rural area" is contradicted by his own statement that the Coop should be reimbursed its rural development funds if it is not allowed to serve. [R. 295, 308] Clearly, as Mr. Norris

conceded, rural economic benefits would accrue to the citizens of Washington County regardless of which utility served the prison facility. [R. 334-335] The conditional nature of these funds is more explicitly demonstrated by a letter from Mr. Norris to Lands Cortin, Chairman of the Washington County Board of Commissioners, wherein the Coop's intent is clearly stated:

The above assistance will be provided including Section A [reference to the \$45,000 grant], part of section B relating to the cost of loan application [the \$308,000 interest free REA loan] and section C having to do with retirement of existing lines and reconstruction and relocation, based on the agreement with the county that the Cooperative will be allowed to serve this facility with all of its electrical needs.

[Exh. 16 (emphasis supplied)]

Unlike the payments made by the Coop in this instance, Gulf Power's contributions in the realm of economic development have not been conditioned on being given the right to serve a new customer, but are intended to truly foster the benefits arising from new businesses locating in the communities served by Gulf Power. [R. 615-618] Gulf Power understands that low rates and high quality of service are also critical to economic development efforts. [R. 600, 604-605, 619-620] Accordingly, it is not Gulf Power's policy to make outright cash payments to potential customers under the guise of "economic development". [R. 615]

Because of the express condition that the Coop be given the right to serve the correctional facility in exchange for the funds either directly given to the County, or absorbed by the Coop, the Commission should consider the \$45,000 grant, the relocation and removal costs of the existing line, and the financial assistance provided through the REA loan of \$308,000 (which the Coop will have to repay if the County defaults) and associated \$11,000 in "processing costs" as costs the Coop incurred specifically to serve the correctional facility. [Exh. 38]

**ISSUE 8:** What would be the effect on each utility's ratepayers if it were not permitted to serve the existing facility?

**\*SUMMARY OF GULF'S POSITION:**

Gulf's ratepayers would continue to incur the cost of existing facilities sufficient to serve the correctional facility, while the DOC will pay higher costs to WCCI due to the Coop's higher rates and, along with the Coop's remaining ratepayers, must absorb the additional costs of duplicating Gulf Power's existing facilities.

**DISCUSSION:** Ratepayers of both utilities will receive benefits as a result of the new prison facility. [R. 348] However, Gulf Power Company's ratepayers are already incurring the cost of facilities which have been in place since 1971 to serve existing customers, which are adequate to serve the facility with minimal

additional expense. If GCEC continues to be afforded the privilege to serve WCCI, Gulf Power's customers will not receive the benefit of the revenue from serving the facility to spread against the fixed costs of these existing facilities. In contrast, the Coop's ratepayers, who are already paying higher rates than if they were Gulf Power customers, would not have had to absorb the Coop's costs of building an unnecessary 4,000 feet of three-phase line specifically to serve this customer if the Coop had not chosen to duplicate the existing facilities of Gulf Power. The Coop's customers will also absorb the costs of obtaining the \$308,000 REA loan from the Coop to Washington County; the grant of \$45,000 to the County; and the cost of removing and relocating the existing line on Red Sapp Road.

Not only would Gulf be able to serve WCCI at a lower incremental distribution cost than the Coop, but because Gulf Power owns the generation facilities necessary to serve its native territorial load (including WCCI if ultimately allowed to serve it) Gulf Power does not have to purchase incremental purchased power in order to give it sufficient power to serve the prison. GCEC, on the other hand, is a distribution only utility and relies exclusively upon purchased power to serve its customers. As a result, every incremental increase in load

responsibility carries with it an immediate increase in the obligation to purchase power from the Coop's exclusive power supply source, Alabama Electric Cooperative ["AEC"]. While it is true that neither AEC nor Gulf Power would have to add generation capacity to serve the prison facility, the same cannot be said for GCEC, which has no reserve generation capacity from which to serve the demand requirements of the prison.

Coop witness Mr. Parish has attempted to confuse the issue by his testimony that Gulf Power's capacity costs will be higher due to Gulf Power's participation in the Intercompany Interchange Contract ["IIC"]. As Gulf Power witness Mr. Howell explained at the hearings in this docket, it is inappropriate to compare an IIC capacity component with AEC's demand charges in evaluating overall cost. The Commission has long recognized that Gulf Power's customers receive significant benefits from the Company's participation in the IIC. At a minimum, these benefits must be considered when evaluating the relative costs and benefits flowing from the operation of the IIC. [R. 565] In this instance, the costs of capacity purchases are included within the customer's overall cost paid to Gulf Power, and those overall costs are significantly lower than the Coop's as discussed under Issue 9. [R. 558-560, 564] Mr. Parish's



implication that Gulf Power's customers must purchase additional capacity through the IIC in order to serve WCCI is incorrect. [R. 463, 464, 467] The capacity equalization provision of the IIC is designed primarily to share temporary surpluses and deficits in reserve capacity among participating companies. [R. 558] Therefore, unlike the purchase arrangement between GCEC and AEC, Gulf's purchases of capacity under the IIC is not to serve incremental load.

Mr. Parish's testimony regarding the IIC cost impacts that may occur as a consequence of Gulf Power serving WCCI is further flawed for several reasons. First, Mr. Parish assumes that the full load impact on the IIC would begin immediately. This assumption is wrong. As Gulf Power witness Mr. Howell testified, even if it were appropriate to consider IIC capacity costs in isolation and even if there were any IIC capacity cost increases due to the prison load, there would be no impact in the first year. In fact, the full impact would only be realized following a three-year averaging period. [R. 481-482, 574] Moreover, if the demand impact were the same, then the capacity cost impact after the three-year period would be less for Gulf Power than for the Coop. [R. 483-485]

Mr. Parish's analysis is flawed even more by his faulty assumptions regarding the relative impacts on GCEC's and Gulf Power's relevant system peaks. Mr. Parish's data and analysis using an Alabama Prison as a proxy for the Washington County facility is one reason for his faulty analysis. Using the Alabama prison, which reportedly peaks between 1:30 p.m. and 3:30 p.m., Mr. Parish states that the demand impact on the Coop would only be 65% of the prison's peak since the Coop's substation peaks at 6:00 p.m. [R. 460-461] First, the record reflects that there are no continuous meters on the Alabama prison, and therefore no data to support the claims in Mr. Parish's testimony. [R. 476] In fact, Mr. Parish admits that he cannot determine the load shape of the Alabama prison. [R. 476, 477] Thus, Mr. Parish had no actual data supporting the load diversity assumption that was incorporated within his opinion concerning IIC capacity costs. [R. 476-477, 563-564] In addition, even if IIC capacity costs are considered in isolation as Mr. Parish recommends, utilizing the correct peak comparisons would reflect that Gulf Power's capacity cost would be only \$18,962 in 1995 compared to Coop capacity costs of \$27,146. [R. 483-485, 535-536] More importantly, the record in this docket reflects the inaccuracy of Mr. Parish's statement that "there is little or no

diversity of this load with Gulf Power Company's monthly peaks".

[R. 461] Exhibit 28 shows the 15 minute demand for the Holmes Correctional Institute located in Bonifay, Florida (approximately 18 miles from the location of the Washington County facility).

If one uses the hour ending 4:15 p.m. for Gulf Power's peak and 5:45 p.m. for the Coop, and the average of the four (4) 15-minute readings leading up to those times, then Gulf Power's demand would be 381 kw compared to a Coop demand of 393 kw. This comparison demonstrates that the diversity difference between Gulf Power and the Coop in comparing a Florida correctional facility favors Gulf Power by a 3% margin. This further supports Gulf's position that the demand impact is approximately the same for the two utilities. [R. 508, 536] It also supports the fact that the cost impact for the Coop is much greater than for Gulf Power.<sup>8</sup> [Exh. 32]

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<sup>8</sup>As shown on Exhibit 32, the differential in the average annual impact of purchased capacity for the first four years favors Gulf Power by approximately \$25,000 per year, when viewed on either a nominal basis ( $\$102,671 / 4 = \$25,667.75$ ) or a net present value basis ( $\$97,448 / 4 = \$24,362$ ).

**ISSUE 9:** Which party is capable of providing electric service to the correctional facility site at the lowest rate to the Department of Corrections?

**\*SUMMARY OF GULF'S POSITION:**

Gulf Power's rates are lower than the Coop's under all scenarios. The Coop's attempt to reduce this differential by deducting a "patronage capital credit" is not realistic. The so-called "credit" will not actually be returned to the Department for 14 years, without interest and has no significant current value.

DISCUSSION: Gulf Power Company's rates are now, and are reasonably expected to remain, significantly lower than the Coop's. [R. 73, 81] Based on a reasonable comparison of the two utilities' applicable rates, the DOC would enjoy an annual savings of over \$14,000 in its bills for electric service if Gulf Power were to be the electric supplier to WCCI.<sup>9</sup>

Gulf Power's rates and charges are reviewed and approved by the Commission, ensuring that the Company's customers pay a reasonable amount for their electric service. As part of this regulation, Gulf's fuel and purchased power costs are evaluated for prudence, giving Gulf Power an added incentive to contract for fuel and purchased power under the most beneficial terms possible. Conversely, the Coop's rates are regulated by no

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<sup>9</sup>Comparing (and annualizing) the monthly bill for GCEC (without showing the current monthly return of patronage capital) from Exhibit 11 to the monthly bill for Gulf Power from Exhibit 7 [ $\$9,017.50 - \$7,846.37 = \$1,171.13 \times 12 = \$14,053.56$ ]

agency, nor are the Coop's fuel and purchased power agreements subject to the oversight of this Commission. AEC's rates and charges are likewise unregulated. Currently, the Coop is subject to an agreement with AEC that the Coop will buy wholesale power from AEC, and only from AEC, for a period of at least thirty more years. [R. 320-322] Thus, there is no system in place which would prevent the Coop from passing along to its customers excessively high costs paid to AEC for its electric power, through the year 2025, even if lower cost power were available from another supplier.<sup>10</sup> [R. 322]

At the time Gulf Power submitted its service proposal to the DOC, Gulf Power estimated that the Department's monthly bill would be approximately \$7,442.66. [R. 148; Exh. 2] At that same time, it was estimated that the Coop's monthly bill to the Department would have been \$9,361.58. This resulted in an annual difference of approximately \$23,027.04 in favor of Gulf Power.

[Exh. 2] Coop witness Mr. Gordon sponsored a rate comparison as

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<sup>10</sup>An example of such an excessive cost flowing to the Coop from AEC is included in the record here, where AEC paid for capacity from the City of Opelika, Alabama at rates substantially above those prevailing in the open market. These excessive costs are being absorbed in part by GCEC, notwithstanding the fact that they are being paid for the sole purpose of settling a territorial dispute for another distribution cooperative located outside of Florida that is also served by AEC [R. 491-493]

well. [Exh. 6 (AWG-5)] Although Mr. Gordon accepted Gulf Power's estimated monthly bill amount, he reduced the estimated monthly bill under Coop's rates by including a Cost of Power Sold Adjustment ["COPSA"] and a monthly credit for the return of patronage capital. Even with these deductions, Mr. Gordon's own calculations reflected that the Coop's monthly bill would be \$8,284.14, approximately 11% higher on an annual basis than Gulf Power's. [R. 219; Exh. 6 (AWG-5)] In fact, the Prehearing Order issued in this docket reflects the Coop's position that Gulf Power's rates are lower, a fact which Coop witness Mr. Norris apparently deems self-evident and with which Coop witness Mr. Parish, of AEC, agrees. [R. 292, 483]

Prior to the hearings in this docket, both Gulf Power and the Coop provided updated rate estimates based on current charges. These estimates showed that Gulf Power's estimated monthly bill increased slightly, from \$7,442.66 to \$7,828.40, while the Coop's decreased slightly, from \$8,284.14 to \$8,205.92. Again, the Coop's estimate reflected a monthly credit for patronage capital. Even with the patronage capital credit, the Coop's updated estimated monthly bill remains \$377.52 higher than Gulf Power's, for an annual difference of approximately \$4,550.

Inclusion of patronage capital as a discount to an estimated monthly bill, or in fact including a patronage capital "refund" as a current benefit of any kind to the Department, is completely illusory and misleading. [R. 153, 235, 585-586] As Coop witness Mr. Gordon explicitly testified, the Department would pay the full monthly bill each and every month, and the 9% of that amount represented as a reduction in the bill would actually ". . . be retained by the Cooperative as a capital credit contribution and returned at a later time". [R. 229] Under current conditions, that "later time" would be fourteen (14) years into the future. [R. 229] When questioned whether the Department would receive any "present benefit for that money", Mr. Gordon responded: "[n]ot for the period of time that is required for retention of it". [R. 230] The capital credit retained by the Coop does not bear interest, despite the fact that there is a time value of money attributable to those funds. [R. 235, 249, 585-586] In fact, there is no requirement, either internal to the Coop or externally required through some sort of governmental regulation, that the amount currently retained from a customer's monthly payment as patronage capital (currently estimated to be 9% of the bill) be returned in full, or even at all. The Coop could decide to lengthen the rotation cycle from

fourteen to twenty years or more. The Coop could decide to spend the funds held in the customers' patronage capital credit accounts for other purposes and return only part (or even none) of the balance. [R. 233-235] In fact, the Coop could elect to spend all of the patronage capital it would otherwise be obligated to return to its customers on "rural economic development."

It is evident from Mr. Kronenberger's deposition that the patronage capital was erroneously considered as a current benefit when the Department performed its rate evaluation. [R. 242-245] The Commission should decline to consider this so-called "credit" as a current reduction to the Coop's monthly bills, and should find instead that Gulf Power's bills are, and will remain, significantly lower than the Coop's.

Finally, at the hearings in this docket Staff offered a calculation performed based on actual rates and charges for October, 1994. This document reflected that in that specific month, including capital credits as a current discount to the October bill, the Coop's bill would have been \$205.67 less than Gulf Power's. Absent capital credits, Gulf Power Company's October bill would have been \$550.01 lower. [Exh. 7] The Commission should be very careful in how it considers the



information in Exhibit 7. First, based on the cross examination testimony of Mr. Gordon, the Commission should not consider capital credits as any kind of rate reduction for purposes of bill comparisons; after all, the Department would pay in October the full \$8,396.38 shown in Staff's calculation, and would have received a credit, if at all, for patronage capital no earlier than January, 2009. [R. 229] Second, the Staff's calculation shows a COPSA adjustment for the month of October as  $-\$0.0032$  for the Coop. [Exh. 11] As Late Filed Exhibit 13 demonstrates, however, the Coop's actual COPSA for October, an off-peak month, is an aberration and is inappropriate for use in a comparison which purports to represent average monthly charges. [R. 584] The Coop itself used an average annual COPSA in its calculation, recognizing that this factor is highly variable. [R. 252] In this instance, the COPSA figure for October was by far the lowest COPSA figure for the twelve previous months, the average COPSA being \$0.06. The October calculation should not be accepted by the Commission as an average for comparison purposes, when history has demonstrated that Gulf Power's rates, on an annual basis, remain consistently lower than the Coop's. The Commission should note, however, that even using the highly unrepresentative COPSA factor for October, 1994, and using the calculations on Exhibit 7 as an annual comparison, the amount the Department

would actually have to pay the Coop for electric service for a twelve-month period would nevertheless be \$6,600 higher than the amount that would be charged by Gulf Power. [R. 229; Exh. 7]

**ISSUE 10:** What is the customer preference for electric service to the correctional facility?

**\*SUMMARY OF GULF'S POSITION:**

The Department of Corrections' policy is to select the low cost provider, all things being equal. Mr. Kronenberger's support for Washington County's selection of the Coop was not based on informed reasoning given his belief that "patronage capital" constituted a current discount to the Coop's rates.

DISCUSSION: First, this issue need not be reached by the Commission under the facts of this case. As the Commission's rule 25-6.0441, F.A.C. makes clear, customer preference is only an issue if all other factors considered by the Commission are "relatively equal". As the discussion under Issues 4 through 9, above, demonstrates, those factors are not equal here. Gulf Power holds a clear advantage over the Coop regarding issues of the relative incremental cost to serve, the ultimate cost to the customer, and the Coop's uneconomic duplication of Gulf Power's existing three-phase facilities along Highway 279.

Even if the Commission does consider customer preference in this docket, the record is insufficient to support

a finding that the customer, in this case the DOC, prefers service from the Coop. First, the selection of the Coop as the electric service provider for WCCI was made by the Washington County Board of County Commissioners, not the DOC. The County's choice was clearly based on the Coop's making a grant of \$45,000 to assist in purchasing the land for the correctional facility (a grant which was expressly conditioned on the Coop being awarded the right to serve the facility), together with other financial assistance including an REA loan of \$308,000 from the Coop to the County. This financial assistance, although of benefit to Washington County, confers no benefit upon the actual customer here: the Department of Corrections, a branch of state government fully funded by the taxpayers of the State of Florida. Wherever and whenever the DOC constructed the prison that is now known to be WCCI, it was going to do so on land donated to the State for that purpose. As a result, although the fact that the Coop contributed to the cost of purchasing the property may have been of assistance to Washington County, that fact had no cost impact to the DOC. Thus, the County's selection of the Coop cannot be imputed to the Department of Corrections, nor can it be deemed to be in the best interests of the Department or the taxpayers of this state.

As to the DOC's preference, the record again is inadequate to support a preference for the Coop. Ron Kronenberger, an employee of the Department, testified at his deposition that the Department supported the County's choice [R. 38]. However, Mr. Kronenberger also stated throughout his deposition that the Department will always select the lower cost provider when other factors are equal. [R. 37, 48-49, 50, 51] In fact, Mr. Kronenberger's testimony on the cost issue is somewhat contradictory. He made the statement that ". . . if cost is the only decision, that is an easy decision for us to make. If that is the only decision, every time we are going to make the decision to go with the same quality or better quality of service. If we could get it at a lower cost, we are going to go with lower cost." [R. 48.] However, he also testified that he had no reason to believe that the Coop's quality of service was better than the quality of service that Gulf Power could provide, and that his own internal estimates showed that Gulf Power's rates would be \$8,000 to \$12,000 lower than the Coop's on an annual basis. [R. 45, 40, 43] These assumptions seem contradictory to his testimony that "[i]f the cost differential was \$2,000 a year we would go with low cost, and that's our philosophy that, again, whether it's a product or a service, all

comparisons being equal, we will go with low cost". [R. 49]  
Commissioner Clark even commented that Mr. Kronenberger's  
deposition testimony could be characterized in ". . . lots of  
different ways." [R. 634]

Further, Mr. Kronenberger's assumptions regarding the  
cost differential between the two providers appear to have been  
based on a lack of understanding of the capital credits the Coop  
included in its rate calculations. Mr. Kronenberger apparently  
was led to believe that the capital credit "refund" would result  
in a current benefit. He stated that ". . . I guess there is  
capital credits, and when they kick in, it could be possibly  
between 8 and \$12,000 on an annual basis." [R. 40] As the  
record here amply demonstrates, however, the capital credit  
refund will not be realized by the DOC for fourteen (14) years on  
the Coop's current cycle. Indeed, there are no guarantees that  
the full credit or any part thereof will actually be refunded at  
all. These facts certainly are not consistent with Mr.  
Kronenberger's understanding that capital credits  
". . . would result in reduced rates to us". [R. 40] In fact,  
Mr. Kronenberger expressly testified that it would have made a  
difference in his analysis if he knew that the credits would be  
refunded in the first year, as compared to a wait of ten years.

[R. 41] The Commission has previously held that customer choice, if at issue at all, refers to an informed choice. In re: Petition of Gulf Coast Electric Cooperative to resolve territorial dispute with Gulf Power Company in Washington County, Docket No. 850247-EU; Order No. 16105 (issued 5/13/86). Here, the record is devoid of any evidence to support an informed choice by the Department.

Again, the Commission should deem this issue irrelevant, due to Gulf Power's clear advantage over the Coop on more objective issues such as incremental cost, adequacy of existing facilities and reliability of service. If this issue is considered, the evidence is simply inadequate to support a finding that the customer preferred service from the Coop.

**ISSUE 11:** Does unnecessary and uneconomic duplication of electric facilities exist in the disputed area?

**\*SUMMARY OF GULF'S POSITION:**

Yes. The Coop duplicated Gulf Power's existing facilities by constructing a new three-phase line parallel to and across the highway from Gulf Power's three-phase distribution line which has been in place along Highway 279 since 1971.

**DISCUSSION:** It is undisputed that Gulf Power has had three-phase distribution lines surrounding the site of the correctional

facility along Highways 279 and 77, since 1971. It is also uncontroverted that the Commission has approved Gulf Power's presence in the area and its right/obligation to serve electric customers from these lines so long as doing so does not result in the uneconomic duplication of electric facilities. In re: Petition of West Florida Electric Cooperative Association, Inc. to Resolve a Territorial Dispute with Gulf Power Company in Washington County, Florida, Docket No. 850048-EU, Order No. 15322, (issued 11/1/85); In re: Petition of Gulf Coast Electric Cooperative to resolve territorial dispute with Gulf Power Company in Washington County, Docket No. 850247-EU, Order No. 16105 (issued 5/13/86) These facilities are more than adequate to provide the prison facility with reliable electric service. It is also undisputed that the Coop chose to construct approximately 4,000 feet of additional three-phase distribution line along Highway 279, parallel to and directly across the highway from Gulf Power's existing three-phase line. In Commission Order No. 12858, issued on January 10, 1984 in Docket No. 830154-EU<sup>11</sup>, involving similar facts, the Commission stated that:

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<sup>11</sup>In re: Petition of Gulf Power Company involving a territorial dispute with Gulf Coast Electric Cooperative. ["Cedarwood Estates"]

. . . Gulf Coast's construction of 3,450 feet of line just to reach the edge of the subdivision when Gulf Power had an existing line immediately adjacent to the entrance of the subdivision amounted to an uneconomic duplication of facilities.

In that instance, Gulf Power was awarded the right to serve the subdivision, with the Commission finding that Gulf Power's cost to serve was significantly less than the Coop's. Similarly, the Commission should find that the Coop uneconomically duplicated Gulf Power's existing facilities, and that Gulf Power's cost of service is significantly less than the Coop's. Based on these findings, the Commission should award Gulf Power the right to serve the correctional facility.

**STIPULATED**

**ISSUE 12:** Do the parties have a formal territorial agreement that covers the disputed area?

\*POSITION:

No.

**ISSUE 13:** Which party should be permitted to serve the disputed area? What conditions, if any, should accompany the commission's decision?

\*SUMMARY OF GULF'S POSITION:

Gulf Power Company should be permitted to serve the disputed area. Gulf Power has reliable and adequate facilities in place to provide the required service at a lower cost to the customer than the Coop.

DISCUSSION: For the reasons discussed under the previous issues --- Gulf Power Company's superior reliability, lower incremental cost of service, and lower rates --- Gulf Power Company should be



permitted to serve WCCI. The Commission should take action in this docket to discourage the Coop from further attempts to "buy" a customer with outright cash payments and low interest loans financed by the taxpayers, and should instead encourage all utilities to compete for new customers on the basis of reliability, cost and the avoidance of uneconomic duplication of facilities. Based on these factors, the Commission should award the disputed area to Gulf Power Company.

**ISSUE 14:** Should this docket be closed?

\*SUMMARY OF GULF'S POSITION:

Yes.

DISCUSSION: For the reasons discussed under Issue 1, above, the Commission should decline to extend this docket to consider other areas not currently in dispute. Instead, the Commission should allow both utilities to continue serving customers based on the guidance provided by the Commission in its rules and decisions in previous territorial disputes.

#### CONCLUSION

The Commission has traditionally considered the incremental cost of service to the customer, the rates the customer will be charged, and the public interest in avoiding

uneconomic duplication of facilities, when deciding territorial disputes. Here, each of these factors weighs heavily in favor of Gulf Power Company. Gulf Power's existing facilities were adequate to serve the Washington County Correctional Institute, yet the Coop constructed new and unnecessary facilities in order to provide the service. In addition, Gulf Power's rates are significantly lower than the Coop's on an annual basis. Awarding the right to serve the facility to Gulf Power Company would thus help the Commission to achieve several goals:

- it encourages utilities to serve customers based on lowest incremental cost to serve;
- it reduces the rates to the customer (here, a state taxpayer-funded institution);
- it avoids the uneconomic duplication of facilities; and
- it discourages future attempts to "buy" electric service customers through outright cash payments and loans rather than earning the business through low rates and reliable service.

Gulf Power Company has taken heed of the Commission's decisions regarding territorial disputes and has been able to successfully avoid litigation of such issues between it and GCEC since 1985. The Coop's actions in this case represent such a clear violation of past Commission precedent that it is apparent that the Coop has little, if any, concern for the Commission's policy of avoiding the uneconomic duplication of electric facilities. In order to avoid opening the floodgates for

similar actions to those taken by the Coop in this case, the Commission must uphold its historical policies for the resolution of territorial disputes both by resolving this individual case in favor of Gulf Power Company and by declining to expand the area in dispute beyond that described in the Company's petition.

Dated this 22nd day of November, 1994.

Respectfully submitted,



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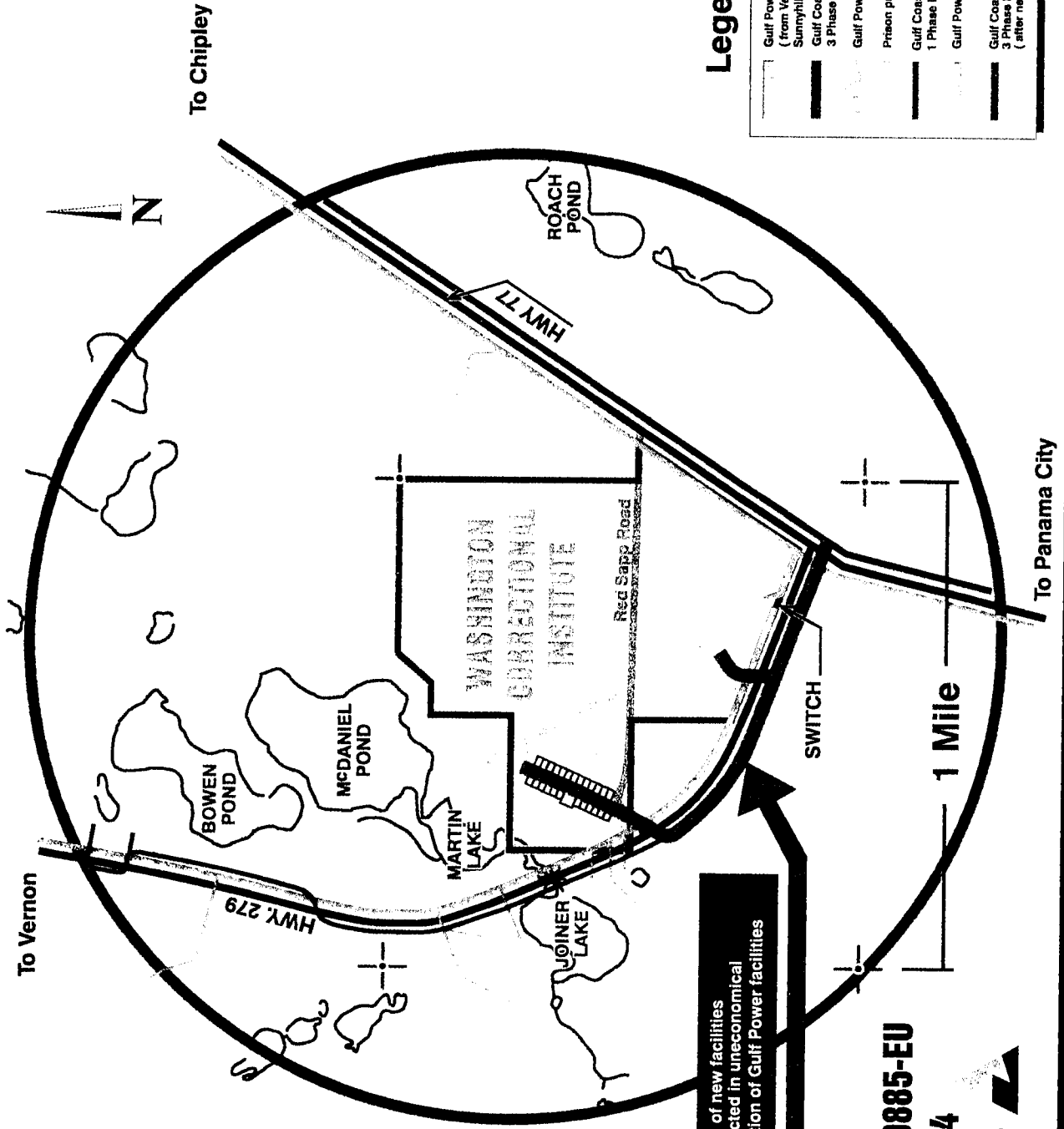
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APPENDIX TO THE  
POST-HEARING BRIEF OF GULF POWER COMPANY

# Washington Correctional Institute Area Map



4,000 ft. of new facilities constructed in uneconomical duplication of Gulf Power facilities

## Legend

	Gulf Power 3 phase lines (from Vernon and Sunnyhills Subs)
	Gulf Coast Electric 3 Phase lines
	Gulf Power Switch
	Prison property lines
	Gulf Coast Electric 1 Phase lines
	Gulf Power 1 phase lines
	Gulf Coast Electric 3 Phase lines (after new construction)

**DOCKET NO. 930885-EU**  
**MAP NO. 4**



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Resolve )  
territorial dispute with Gulf ) Docket No. 930885-EU  
Coast Electric Cooperative, Inc. ) Filed: Nov. 22, 1994  
by Gulf Power Company. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by hand delivery or U.S. Mail the 22nd day of November, 1994, to the following:

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