

One Energy Place
Pensacola, Florida 32520

Tel 850.444.6000



September 11, 1997

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Dear Ms. Bayo:

Re: Docket No. 930885-EU

Enclosed are an original and fifteen copies of the Post-Hearing Brief of Gulf Power Company in the above docket.

Also enclosed is a 3.5 inch double sided, high density diskette containing the Brief in WordPerfect for Windows 6.1 format as prepared on a MS-DOS based computer.

Sincerely,

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTE _____
lw _____
EIT _____
LE _____
cc: 3 _____
cc: Beggs and Lane
Jeffrey A. Stone, Esquire

Enclosures

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition to resolve territorial dispute Docket No. 930885-EU
with Gulf Coast Electric Cooperative, Inc. by Filed: September 12, 1997
Gulf Power Company

POST-HEARING BRIEF OF GULF POWER COMPANY

Gulf Power Company ["Gulf Power"], 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, PSC-96-0466-PCO-EU (as amended by Order Nos. PSC-96-1274-PCO-EU, PSC-97-0793-PCO-EU and PSC-97-1000-PCO-EU), hereby submits this post-hearing brief.

INTRODUCTION

The Commission should decline to establish territorial boundaries in this proceeding because drawing territorial boundaries or "lines on the ground" is not necessary to prevent further uneconomic duplication of electric facilities and is therefore not in the public interest. In fact, "lines on the ground" would actually lead to and compel the further uneconomic duplication of electric facilities, contrary to the specific statutory mandate the Commission is charged with enforcing. [Tr. 161-162] The dynamic system that Florida presently uses to allocate utility territory provides the Commission and the utilities in this case with an inherent flexibility that allows the public interest to be served. [Tr. 161] This flexibility has been useful and effective in the resolution of territorial disputes in the past and is still needed with regard to territorial disputes that may arise in the future. [Tr. 176] Only one territorial dispute between Gulf Power and Gulf Coast Electric Cooperative (GCEC) has come before the Commission for resolution in

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the past twelve years. The Commission's current guidelines and rules can adequately resolve any territorial dispute that may occur.

For the Commission to actually draw "lines on the ground" between two utilities in the absence of an agreement between those utilities appears to be without precedent in Florida. In this case, there is no active, bona fide dispute between the two utilities over service to a particular customer or group of customers actively seeking electric service. In the past, the Commission has wisely recognized that Subsection 366.04(2)(e) of the Florida Statutes speaks in terms of an existing territorial dispute. Until an actual and real controversy arises, the Commission has declined to intercede in and preclude a potential dispute by establishing territorial boundaries. There is no compelling reason for changing Commission policy in this case. [Tr. 162] As recognized in a Florida State University Law Review article, authored by members of the Commission staff, the present "innovative" system provides continuity, without imposing a single rigid model or predetermined result on the citizens that may be served by these utilities in the future. [Tr. 160-161] The Florida legislature has consistently declined to mandate such a rigid policy for the state whenever such proposals have been presented during legislative sessions. [Tr. 160-161] The current method of resolving territorial disputes using the Commission's least cost to serve policy on a case-by-case basis should be continued as it is consistent with the law and is in the public's best interest. Lines on the ground would violate the Commission's least cost policy and is not in the public's best interest. Based on its history of providing adequate and reliable electric service at prices that are historically among the lowest in the state, Gulf Power would ordinarily be the economic choice to extend facilities and provide electric service to future electric service customers who might otherwise find themselves on the

“wrong” side of an arbitrary boundary line allocating territory to the two utilities involved in this proceeding. [See Tr. 156-157, 328, 511] These customers would not find it to be in their best interests if lines were drawn on the ground.

ISSUES AND POSITIONS

ISSUE 1: What are the areas in South Washington and Bay Counties where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity?

*SUMMARY OF GULF'S POSITION:

Those places on the following identified maps (Composite Exhibit 6) in which one utility's facilities are within 1000 feet of the other utility's facilities: map numbers 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519, 2618, 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW.

DISCUSSION: The answer to this issue is dependent on the definition of "close proximity."

The only evidence in this record defining this term suggests that the outer limit of "close proximity" is no greater than 1,000 feet. Those places on the above referenced maps where one utility's facilities are within 1,000 feet of the other utility's facilities are in close proximity of one another. [Tr. 268]

ISSUE 2: What are the areas in South Washington and Bay Counties where further uneconomic duplication of electric facilities is likely to occur?

*SUMMARY OF GULF'S POSITION:

There are no such areas, provided that fixed boundaries are not mandated. Future uneconomic duplication of electric facilities can be easily avoided by these utilities through the application of and compliance with guidelines previously established by this Commission or through refinements such as those set forth in Composite Exhibit 5.

DISCUSSION: Given the established guidelines of the Florida Public Service Commission and the Florida Supreme Court regarding the resolution of territorial disputes, further uneconomic duplication of facilities is not likely to occur in South Washington or Bay Counties unless a fixed boundary is imposed by this Commission. [Tr. 244] The current territorial dispute

resolution rules should continue to be utilized in territorial matters as they provide an effective, but flexible set of guidelines by which further uneconomic duplication of facilities can be avoided. [Tr. 160-61, 163, 191] Members of the Commission staff, in a published law review article, reached the same conclusion about the current regulatory scheme. [Tr. 161] Further, since the enactment of the current regulatory scheme in 1974, the legislature has revisited this area of the law on more than one occasion and has continued the current regulatory scheme in lieu of mandating lines on the ground or designating exclusive territorial areas to each of the electric utilities in the state. [Tr. 99, 161-162]

Proof of the effectiveness of the current guidelines is the fact that so few disputes have come before the Commission for resolution since the inception in 1974 of the Commission's authority in this area. Only one dispute between these two utilities, the dispute over service to the Washington County Correctional Institute, has come to this Commission for resolution in the last twelve years. [Tr. 191] This is a result of the utilities having become much better over the years in determining what constitutes uneconomic duplication as a result of the Commission's and the Supreme Court of Florida's resolution of previous territorial disputes throughout the state. [Tr. 161, 215-216] No regulatory scheme can both eliminate all territorial disputes and at the same time avoid the further uneconomic duplication of facilities, but the current regulatory scheme has been very effective at both. Moreover, despite the implications to the contrary by GCEC and Staff witness Mr. Bohrmann, the elimination of territorial disputes is not a specific statutory mandate. As such, the elimination of territorial disputes should not be a goal achieved by actions that will lead to a violation of the specific statutory mandate to avoid the further uneconomic duplication of facilities. Furthermore, it is contrary to the public interest for the

Commission, in the absence of a statutory change, to eliminate the degree of customer choice preserved by the Florida Supreme Court in Gulf Coast Electric Cooperative, Inc. v. Clark, 674 So. 2d 120 (Fla. 1996). [Tr. 116, 179, 222]

Future uneconomic duplication of electric facilities can be easily avoided by these utilities through the application of and compliance with guidelines previously established by this Commission or through refinements such as those set forth in Exhibit GEH-3 or Exhibit GEH-4. [Composite Exhibit 5][Tr. 154, 160-64, 166-69] Though it is Gulf Power's position that the current regulatory scheme for avoiding uneconomic duplication of facilities and resolving territorial disputes is effective, Gulf Power witnesses William C. Weintritt and G. Edison Holland have offered proposals which would serve as refinements to the current regulatory scheme that would aid in the prevention of the further uneconomic duplication of electric facilities in South Washington and Bay Counties. Each proposal contains requirements that supplement, rather than replace, the current regulatory scheme. [Tr. 168-169]

The first proposal is the use of guidelines similar to those set forth in the FERC tariff that governed the contractual relationship between Gulf Power and GCEC for many years. These guidelines allow for the orderly least cost expansion of both Gulf Power and GCEC in the unserved areas of Bay and South Washington Counties without the further uneconomic duplication of facilities. [Tr. 275-76] The lack of disputes in the past twelve years and the few disputes which occurred prior to that show that these guidelines are very effective in achieving the Commission's statutory mandate to avoid the further uneconomic duplication of electric facilities and still preserve the degree of customer choice allowed by statute as recognized by the Florida Supreme Court in Gulf Coast. Placing the number of disputes in perspective with the

fact that Gulf Power's Eastern District saw the addition of 26,000 new customers in the last twelve years caused Staff witness Mr. Bohrmann to acknowledge, "that the two utilities have been able to expand their customer base with so few disputes." [Tr. 275 and 430] This shows that the current guidelines are sufficient to prevent the further uneconomic duplication of electric facilities, but flexible enough to allow economic expansion of both utilities' electric systems. [Tr. 168, 274-275]

In addition to the proposal by Mr. Weintritt to utilize the previous FERC tariff guidelines as a refinement to the current regulatory scheme, Gulf Power witness Holland has offered proposals which serve as alternative refinements to the current regulatory scheme. All of Gulf Power's proposals are consistent with the statutory mandate to prevent the further uneconomic duplication of electric facilities. Mr. Holland's first proposal is found in Exhibit GEH-3 to his direct testimony. [Composite Exhibit 5] GEH-3 is based on the FERC tariff and the wholesale service contract which had provisions for the avoidance of uneconomic duplication of facilities. [Tr. 166-168, 273] The wholesale service contract was in effect between these two parties until 1981. [Tr. 272] The guidelines proposed in GEH-3 prohibit the extension of distribution lines to serve future speculative growth and require the utilities to discuss potential disputes. [Tr. 167-168] Mediation by the Commission staff would occur if the utilities found they could not resolve a potential dispute through this consultation process. [Tr. 167-168] A provision allowing for an award of attorney's fees to the prevailing party would provide further incentive to the utilities to reach agreement short of contested litigation. [Tr. 167-168, 277] These proposed guidelines

would allow the economic expansion of both utilities to the benefit of all ratepayers of Northwest Florida and drastically reduce the need for direct Commission resolution of territorial disputes.

[Tr. 168]

Mr. Holland's second proposal is a policy statement found in GEH-4. [Composite Exhibit 5] This proposal would also prevent the further uneconomic duplication of electric facilities while allowing both utilities to expand. GEH-4 sets forth a mechanism for consultation between the utilities in instances where it appears a request for service may result in a potential dispute and provides for mandatory mediation prior to bringing a dispute to the Commission. [Tr. 168-169] GEH-4 also provides for an award of attorney's fees to the prevailing party if the dispute is resolved in litigation. [Tr. 168-169] Moreover, GEH-4 embodies the recent Florida Supreme Court decision which found that the spending by GCEC of approximately \$15,000 more than Gulf Power to serve the Washington County Correctional Institute was not an uneconomic duplication of electric facilities. [Tr. 171-172] This concept allows for customer choice when the net incremental cost of the selected utility is no more than \$15,000 greater than the net incremental cost to serve of the other utility. [Tr. 171] The threshold amount could be more or less than \$15,000 depending on the type and size of load. The incorporation of a threshold amount is to recognize that there is a certain level of cost difference to serve a new customer or load that is not uneconomic duplication of electric facilities. See Gulf Coast

The establishment of fixed territorial boundaries in the manner sought by GCEC or Staff witness Mr. Bohrmann would lead to, rather than avoid, further uneconomic duplication of electric facilities in South Washington and Bay Counties. [Tr. 195, 198] GCEC and Mr. Bohrmann each propose some form of fixed territorial boundary which would be based in large

measure on the location of single phase electric lines. [Tr. 496-497, 511] As shown by Gulf Power's witness Mr. Theodore S. Spangenberg, fixed territorial boundaries such as those proposed by either GCEC or Mr. Bohrmann **would result in, rather than prevent**, the further uneconomic duplication of facilities. [Tr. 218] **This Commission should not take a remedial action in this matter that will lead to, rather than prevent, the exact outcome which it has been charged by the legislature to avoid: further uneconomic duplication of facilities.**

Moreover, Gulf Power has offered several alternatives to drawing "lines on the ground" that accomplish avoidance of further uneconomic duplication of facilities while preserving the degree of customer choice recognized by the Florida Supreme Court in Gulf Coast. This Commission should not impose territorial boundaries, the most extreme resolution of this case, where less extreme alternatives exist that would accomplish all of the purposes it has set out to accomplish in this case. The least restrictive choice which meets the objective should prevail over a harsh alternative that, as the record reflects, will not meet the statutory mandate of this Commission as to the avoidance of further uneconomic duplication of electric facilities.

The fixed territorial boundaries proposed by GCEC and Mr. Bohrmann completely ignore the Commission's cost to serve policy and the electrical needs of future customers. [Tr. 322, 495, 511] GCEC's position is clear in that it believes it has a right to serve any area where it has a single phase distribution line, even if the new load or customer that locates in that area requires a different character of service (i.e. other than single phase distribution) that can and should be economically provided by another utility. [Tr. 495-497] GCEC's position is based on its notion of historical presence and is contrary to the statutory mandate to avoid the further uneconomic duplication of facilities. Establishment of a territorial boundary without consideration of future

customers' electrical needs and each utility's cost to serve the future customers **will** result in uneconomic duplication of facilities in South Washington and Bay Counties. [Tr. 344]

Proposed territorial boundaries would prematurely determine the electric supplier of an area drastically long before electric service is requested without knowing and accounting for conditions that may change. [Tr. 511-512] Unlike the majority of peninsular Florida, the panhandle region of Florida, where both South Washington and Bay Counties are located, is made up of many vast unserved areas that are as of yet undeveloped. [Tr. 158, 330-331] Mr. Bohrmann testified that it is impossible to know at this time with any degree of certainty exactly what types of customers and service requirements will be added in these vast unserved areas. [Tr. 388] Likewise, there is no possible way to determine the cost to serve the new customers that will locate in South Washington and Bay Counties at this time. None of the information needed to make an informed decision as to who should serve these new customers exists at this point in time so far removed from the actual time when the new customer or load will come into being. [See Tr. 414] It is not possible to determine the relative cost to serve of Gulf Power and GCEC for future customers and load at this time, and therefore it cannot be determined which utility should serve the load to avoid uneconomic duplication of facilities. [See Tr. 388] Mr. Bohrmann's direct testimony is that a territorial boundary is unnecessary where no uneconomic duplication of facilities exists. [Tr. 388] In fact, Mr. Bohrmann states that to draw a territorial boundary in that instance would preclude customer choice. [Tr. 388] Determination of whether duplication is an uneconomic duplication should be made on a case-by-case basis contemporaneous with the addition of the new load or customer. [Tr. 216, 241, 243]

The record contains numerous examples of situations where the existence of a territorial

boundary would lead to and in fact mandate uneconomic duplication of facilities by either Gulf Power or GCEC. [Tr. 123-124, 495-497] These examples are not worst case scenarios but are in fact likely to occur as the now unserved areas become populated. The territorial boundaries sought by GCEC and Staff witness Mr. Bohrmann designate that each utility will serve only the area on its side of the boundary regardless of how much it would cost either utility to serve a new customer or new load and without regard to the size of the load or adequacy of the existing facilities from which service could be obtained. Mr. Spangenberg and Mr. Holland discussed numerous examples where, as a result of drawing a territorial boundary, the utility having the least cost to serve would be prohibited from serving a load and the utility on whose side of the boundary the load is located would be required to build uneconomic and duplicative facilities to serve such new load. [Tr. 159-160, 495-497] This is especially likely when the boundary is based on single phase distribution lines as is proposed by both GCEC and Mr. Bohrmann. [Tr. 496-97, 511] Three-phase service or transmission level service may be required by new customers in South Washington and Bay Counties. If the utility on whose side of the boundary the new load is located does not have adequate three-phase or transmission level facilities in the area to serve the new load, that utility would be forced to build the new facilities. This is true even if the other utility has adequate three-phase or transmission level facilities closer to the new load, but on the other side of the territorial boundary, and would have to construct little if any new facilities to serve the new load.

The proposed territorial boundary offered by Mr. Archie Gordon on behalf of GCEC would lead to many instances of further uneconomic duplication of electric facilities due to the fact that the proposed line closely encircles the facilities of Gulf Power and completely ignores

all cost to serve issues and the types of load and facilities that exist currently and may exist in the future. Again, the proposed territorial boundary is based on GCEC's notion of historical presence as defined by the existence of single phase distribution lines. Mr. Gordon's proposal carves out for GCEC most of the vast unserved territory and eliminates all expansion by Gulf Power while forcing GCEC to expand uneconomically to serve new loads and customers that could otherwise be economically served by Gulf Power. [Tr. 495-497, 511-512] His proposal would preclude the type of customer choice that the Florida Supreme Court found to be proper in Gulf Coast. Thus, GCEC's proposed territorial boundary would forbid the proper utility from serving the new load and would mandate further uneconomic duplication of electric facilities. This would be an absurd result in light of the Commission's legislative mandate to avoid the further uneconomic duplication of facilities and the interpretation of that mandate by the Florida Supreme Court, as well as the Commission's policy on resolving territorial disputes..

Throughout this proceeding, GCEC has asserted, without proof, that further uneconomic duplication of facilities will occur in areas of Bay and Washington counties if territorial boundaries are not drawn. [Tr. 22-23, 65] This belief appears, in part, to be a result of GCEC's apparent lack of familiarity with the Commission's practices in resolving territorial disputes. Evidencing GCEC's lack of familiarity with such rules is that Mr. Gordon, the witness responsible for formulating GCEC's proposed territorial boundary, clearly ignores the Commission's policy and rule on using cost to serve in the resolution of territorial disputes. Instead, Mr. Gordon proposes a territorial boundary on behalf of GCEC which completely disregards cost to serve. In fact, cost to serve is not even one of the factors he lists as important in establishing a territorial boundary or resolving a territorial dispute. [See Tr. 25-26] This

omission occurs despite the fact that cost to serve is listed as a consideration in the Commission's rule regarding the resolution of a territorial disputes. [Rule 25-6.0441(2)(c), Florida Administrative Code] Likewise, GCEC conveniently ignores the factors that it proposes should be used by this Commission and that supposedly were used by Mr. Gordon in drawing a proposed territorial boundary. The record contains many examples of instances where Mr. Gordon ignores one or more of his factors so as to apportion more area to GCEC. [Tr. 512-513]

GCEC argues that line crossings and instances where the facilities of the two utilities are in close proximity are uneconomic duplication of facilities. [Tr. 640-641] GCEC and Gulf Power both agree with the Florida Supreme Court that some level of duplication is de minimis. [Tr. 215-216, 653-655] Testimony by GCEC witness Mr. William S. Dykes offers several instances of what GCEC terms uneconomic duplication of GCEC's facilities by Gulf Power where the difference in cost to serve between the two utilities is based on a distance of one hundred feet, a distance that Mr. Dykes considers to be a de minimis amount of duplication. [Tr. 640-642, 653-655] Mr. Dykes first argues that Gulf Power uneconomically duplicated the facilities of GCEC to serve Alliance Realty. [Tr. 640] In that instance the difference between the two utilities was less than one hundred feet, meaning the cost to serve differential was de minimis by Mr. Dykes's own admission. Next, GCEC alleges that Gulf Power uneconomically duplicated GCEC's facilities by constructing one hundred feet of line to serve a customer in Youngstown. Again, this is de minimis as defined by GCEC's own witness and not uneconomic duplication of facilities. [Tr. 653-655] Thus, the very examples offered by GCEC to show that Gulf Power has uneconomically duplicated the facilities of GCEC in fact reveal no uneconomic duplication of facilities.

The position taken by staff witness Mr. Bohrmann as to the possibility of further uneconomic duplication of facilities in areas where the utilities are commingled or in close proximity is inconsistent with the Florida Supreme Court's holding in Gulf Coast. In that case, the Florida Supreme Court held that where the difference in cost to serve is de minimis, no uneconomic duplication of facilities has occurred and customer choice should prevail if all other factors are substantially equal. Gulf Coast at 123. Mr. Bohrmann testifies that the Commission should establish territorial boundaries in areas of South Washington and Bay Counties where "Gulf Power's and Gulf Coast's distribution lines are in close proximity of each other, commingled or both." [Tr. 387-388] The cost to extend service in areas where the two utilities' facilities are in close proximity of each other, commingled, or both is de minimis in most instances. [Tr. 550] In fact, often only a service drop is required of either utility. [Tr. 464] In these areas it is most likely that no uneconomic duplication of facilities could occur. [Tr. 550] Thus, in the commingled areas where the cost to serve is de minimis, and therefore no uneconomic duplication of facilities is likely to occur, a territorial boundary is inappropriate.

ISSUE 3: What is the expected customer load, energy, and population growth in the areas identified in response to Issues 1 and 2?

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

The expected customer load, energy and population growth on Gulf Power's system in the full portions of South Washington and Bay Counties shown on the maps identified as Composite Exhibit 6 (enumerated in Gulf's position on Issue 1 above) are as follows:

YEAR	CUSTOMER LOAD	ENERGY	CUSTOMERS*
	(KW)*	(KWH)*	
1995	15,495	28,819,654	1,371
1996	15,818	32,712,628	1,438
1997	17,112	35,269,973	1,511
1998	18,946	41,093,598	1,588
1999	20,219	43,700,186	1,668
2000	21,759	46,881,912	1,753

*All values given are determined by the customers presently served by Gulf Power with the expected growth assuming no change in the method of determining customer's affiliation.

This forecast is based on reasonable planning assumptions and does not require significant facility upgrades or additions in order for Gulf Power to provide the required electric service.

DISCUSSION: The growth rate is gradual and only a moderate number of customers are added by Gulf Power each year in the identified areas. [Tr. 448, 457] Gulf Power's planning is based on reasonable projections of growth. [Tr. 448] Gulf Power and GCEC plan to serve an expected aggregate load growth in an area. [Tr. 128, 361-363] Historical growth trends, known customer additions and the presence of GCEC's facilities are utilized by Gulf Power in projecting the

future load growth. [Tr. 449] Nothing in the disputed area is expected to change enough to have any impact on Gulf Power's transmission system or its planning. [Tr. 462] The same is true with regard to Gulf Power's generating capacity resource needs. [Tr. 462]

Fixed territorial boundaries provide no benefit to planning of the distribution system in the identified areas. [Tr. 463] Both Gulf Power and GCEC should be allowed to grow naturally as new customers locate in South Washington and Bay Counties. Mr. Bohrmann, on behalf of the Commission Staff, agrees with this stating that "no one can accurately predict today how growth patterns will occur in the now-undeveloped parts of the disputed area in the future. Therefore, the Commission should not impede the logical cost-effective expansion of each utility's services." [Tr. 388] GCEC witness Stephen Page Daniel is incorrect in his belief that a fixed territorial boundary makes it possible to accurately project the cost of providing adequate facilities to meet future growth. Gulf Power witness Mr. William F. Pope testified that "reasonable system planning neither requires nor supports the need for such precision." [Tr. 467] Gulf Power's expansion in the identified area is driven by specific customer requests for service which are met by Gulf Power with specific construction to provide the requested service. As explained by Mr. Spangenberg, "nobody serves areas; they serve customers." [Tr. 364] It is almost impossible for Gulf Power and GCEC to be planning to serve the same load. [Tr. 363] Expected load growth, rather than the area being served, is the basis of planning. [Tr. 364]

ISSUE 4: What is the location, purpose, type and capacity of each utility's facilities in the areas identified in response to Issues 1 and 2?

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

Gulf Power's customers in the identified areas of South Washington County are served by two separate Gulf Power substations. Sunny Hills Substation is a 12 MVA, 115 KV to 25 KV substation located south of Gap Pond in Sunny Hills, Florida. Vernon Substation is an 11.5 MVA, 115 KV to 25 KV substation located south of Vernon, Florida. From each of these substations, 25 KV feeders provide the preferred and back-up sources for reliable service to the identified area. Local overhead and underground distribution lines, and transformers provide service to Gulf Power's customers as shown on the following Florida grid coordinated maps that are part of Composite Exhibit 6: map numbers 2218NE, 2218NW, 2218SE, 2218SW, 2220, 2221, 2320, 2321, 2322, 2518, 2519 and 2618.

Gulf Power's customers in the identified areas of Bay County are served by Gulf Power's Bay County Substation. Bay County Substation is a 13.75 MVA, 115 KV to 12.47 KV substation located in Bay Industrial Park, off Highway 231, north of Panama City, Florida. A 12.47 KV feeder from Bay County Substation provides the preferred source of feed with another 12.47 KV feeder from Highland City Substation providing the back-up source of feed. Local overhead and underground distribution lines, and transformers provide service to Gulf Power's customers as shown on the following Florida grid coordinated maps that are part of Composite Exhibit 6: map numbers 2533, 2534, 2632, 2633, 2634, 2639, 2731, 2733, 2828NW, 2828SW, 2828NE, 2828SE, 2830NE, 2830NW, and 2830SW.

DISCUSSION: None

ISSUE 5: Is each utility capable of providing adequate and reliable electric service to the areas identified in response to Issues 1 and 2?

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

Gulf Power is fully capable and prepared to provide all aspects of adequate and reliable service to the identified areas both now and in the foreseeable future, at rates that are subject to the regulatory jurisdiction of the Commission.

DISCUSSION: Gulf Power, with its own generation, transmission and distribution facilities, is

fully capable and prepared to provide all aspects of adequate and reliable service to the identified areas both now and in the foreseeable future, at rates that are subject to the regulatory jurisdiction of the Commission. [Tr. 271-272, 454, 462, 531-533] The distribution reliability of Gulf Power is much better than that of GCEC. [Tr. 271] Gulf Power's main backbone feeder system in the identified areas is fully adequate to provide reliable service to the area. [Tr. 454] Based on its history of providing adequate and reliable electric service at prices that are historically among the lowest in the state, Gulf Power would ordinarily be the economic choice to extend facilities and provide electric service to future electric service customers who might otherwise find themselves on the "wrong" side of an arbitrary boundary line allocating territory to the two utilities involved in this proceeding. [See Tr. 156-157, 328, 511] Gulf Power's basic business objective of providing reasonably priced electric service to customers in Northwest Florida through the incentives inherent in the free enterprise system and the profit motive would be hindered by arbitrarily drawing a boundary line that would preclude Gulf Power from serving customers who would otherwise request that it provide them electric service. [Tr. 156] This could result in a negative impact on economic development in Bay and South Washington Counties. **In fact, two customers, the Bay County Commission and the Panama City Port Authority submitted formal resolutions asking this Commission not to draw territorial boundaries that would preclude them from taking service from their current electric service provider, Gulf Power.** [Tr. 715-717] Carol Atkinson, representing the Bay County Commission, expressed concern with the rates and reliability of the electric service from a utility other than Gulf Power. In fact, she said that it was not in the best interest of the Bay County Commission to pay the "significantly" higher rates that would impact their industrial park if service was transferred from Gulf Power's

system. [Tr. 715] Further, she stated that reliability was a "critical issue" to the Bay County Commission and that they were "happy with the status quo." [Tr. 715]

Although GCEC may be capable of providing adequate and reliable electric service to the identified areas, there is no assurance that GCEC will do so because its customers have no available means of effectively protesting the adequacy, the reliability or the price of electric service provided by GCEC. [Tr. 211] GCEC, notwithstanding its desire for regulatory protection from competition to serve new customers, is not subject to the full regulatory jurisdiction of the Commission over the level of rates. [Tr. 157] However, Gulf Power is fully regulated as to rates, reliability and service by the Commission.

ISSUE 6: How should the Commission establish the territorial boundary between Gulf Power and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and further uneconomic duplication of facilities is likely to occur?

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

A territorial boundary should not be established in South Washington or Bay Counties. "Lines on the ground" are not in the best interests of the customers of either utility. The Commission should follow its existing guidelines for dispute resolution or one of the alternatives proposed by Gulf Power.

DISCUSSION: The Florida Public Service Commission's legislative charge is the "avoidance of further uneconomic duplication of generation, transmission and distribution facilities."

[Chapter 366.04(5), Florida Statutes] The statutory charge is clear that only "further" uneconomic duplication of facilities is subject to the Commission's authority. Past uneconomic duplication is not covered by the Commission's statutory grant of authority and therefore is not a

proper subject of this proceeding. This statutory grant of authority is only forward looking. Next, and most important, is the use of the term "uneconomic duplication" in the statute. By the use of this term, the legislature has expressly limited the Commission's authority over the duplication of electric facilities that does not rise to the level of uneconomic. As recognized by the Florida Supreme Court, not all duplication is uneconomic. See Gulf Coast. In Gulf Coast, the Florida Supreme Court held that a relative cost differential of approximately \$15,000 did not result in uneconomic duplication and that customer preference should prevail. The Court made clear that when the relative difference in cost to serve between two utilities is "relatively small", or "de minimis", that no finding of uneconomic duplication by the Commission can stand. Gulf Coast at 123. The fixed territorial boundaries proposed by both GCEC and staff witness Mr. Bohrmann completely ignore the Court's clear mandate. GCEC witnesses rest their spurious conclusion on the notion that the \$15,000 amount is not a precedent and that the holding in Gulf Coast is limited to its facts. [Tr. 624] Such a position is unjustified. The basic holding articulated by the Florida Supreme Court in Gulf Coast is that customer choice does matter and that there is a level of cost that is too small to constitute uneconomic duplication. Although the \$15,000 amount determined in Gulf Coast is not a bright line threshold of what is de minimis, it is a compelling indication by the Florida Supreme Court that not all duplication is uneconomic. [Tr. 172, 326] The amount of duplication that rises to the level of uneconomic duplication is best determined on a case-by-case basis when the characteristics of the new load and the electric facilities present in the area of the new load are known. [Tr. 216, 241, 243] This fact justifies rejection of "lines on the ground" in favor of the current regulatory scheme subject to, at most, minor refinement.

In the past, the Commission has declined to even consider establishing a territorial boundary in the absence of an active and bona fide dispute between two utilities over service to a particular customer or group of customers actively seeking electric service. [Tr. 548] In Order No. 15348, issued November 12, 1985, the Commission stated that "... Subsection 366.04(2)(e), Florida Statutes, speaks in terms of an existing territorial dispute, and unless and until an actual and real controversy arises, no statutory basis for interceding in a potential dispute exists." In re: Petition of Choctawhatchee Electric Cooperative, Inc. for approval of a territorial agreement with Gulf Power Company 85 FPSC 11:74 Though amended since the time of that order, Subsection 366.04(2)(e), Florida Statutes, still contains the requirement that a real and actual controversy exists. As in Choctawhatchee Electric Cooperative, Inc., no such dispute or controversy exists in this case. The lack of a real case or controversy in this docket is acknowledged by Mr. Bohrmann. [Tr. 420] Moreover, the necessity for a real and actual controversy is clear. The data needed to make a determination of whether a duplication is uneconomic is not now available for customers, load or facilities that do not currently exist. Only an actual controversy provides the necessary facts which this Commission must have to make a decision as to uneconomic duplication of facilities.

The wording on this issue is based on the faulty premise that where electric facilities are commingled and/or in close proximity, further uneconomic duplication of facilities is likely to occur. This is contrary to testimony asserting that where electric facilities are commingled and/or in close proximity, the further uneconomic duplication of facilities is not likely to occur since the cost for either utility to serve a new customer in such an area would be de minimis. [Tr. 172, 549-551] In fact, often only a service drop is required of either utility. [Tr. 464] The same is true

in areas where the lines of two utilities cross. [Tr. 290] Thus, in the commingled areas where the cost to serve is de minimis, no uneconomic duplication of facilities is likely to occur and a boundary is inappropriate.

The position taken by staff witness Mr. Bohrmann as to the possibility of further uneconomic duplication of facilities in areas where the utilities' facilities are commingled or in close proximity is inconsistent with the Florida Supreme Court's holding in Gulf Coast since it precludes statutorily protected customer choice even in cases where the difference in cost to serve is de minimis, no uneconomic duplication of facilities will occur and all other factors are substantially equal. [Tr. 172, 326] In such areas, it is nearly impossible for uneconomic duplication of facilities to occur. Since no uneconomic duplication of facilities is likely to occur where the two utilities' facilities are in close proximity of each other, commingled, or both, the Commission should not impede the logical economic expansion of the two utilities by establishing a territorial boundary. The current system of case-by-case determination is most appropriate in light of these instances.

If a fixed territorial boundary is established by this Commission, the legislative mandate of the Commission to avoid further uneconomic duplication of electric facilities would be violated because a fixed territorial boundary as proposed by either GCEC or Mr. Bohrmann would in fact lead to, not avoid, the further uneconomic duplication of facilities. [Tr. 195, 198] GCEC proposes a territorial boundary which purports to be based on six factors, none of which includes cost to serve. [Tr. 26] This is against this Commission's practice of using cost to serve in resolving a territorial dispute and completely ignores the Commission's duty to avoid **uneconomic duplication** of electric facilities. [Tr. 159] Moreover, GCEC bases its

proposed territorial boundary almost solely on the presence of distribution lines existing at this point in time without regard to the size and characteristics of the load that may develop or the adequacy of the electric facilities to serve the future load. [Tr. 511] This failure to recognize the character and capability of existing facilities will lead to unnecessary costs for facility expansion. [Tr. 495] The record contains many examples showing that GCEC's proposed boundary will lead to the uneconomic duplication of electric facilities in South Washington and Bay Counties. [Tr. 195, 198, 495-497] Further, the customer choice permitted by the Florida Supreme Court when no uneconomic duplication of facilities has occurred would be eliminated completely by imposing the proposed territorial boundaries. [See Tr. 511] Finally, GCEC conveniently ignores the six factors that it claims should be utilized in drawing its proposed territorial boundary. [Tr. 512-513] There are many instances in which the boundary proposed by GCEC is placed immediately adjacent to Gulf Power's facilities while GCEC's nearest facilities are a great distance away. [Tr. 512] Such a proposal grants to GCEC vast areas of unserved territory and limits Gulf Power Company to its present facilities. [Tr. 496-497, 511]

Mr. Bohrmann's proposal includes provisions that would require customers to be transferred, or "swapped" between the two utilities. Neither, GCEC nor Gulf Power advocates "swapping" customers. [Tr. 390] Swapping customers would be uneconomic and not in the best interests of the customers. [Tr. 471] Additional capital expenditures would have to be made to transfer customers. [Tr. 551] These additional capital expenditures would affect both new and existing customers. [Tr. 552]

ISSUE 7: Where should the territorial boundary be established?

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

A territorial boundary should not be established between these two utilities. The public interest is not served by precluding the continuation of the process of resolving territorial disputes on a case-by-case basis. See also Gulf Power's position on Issue 6, above.

DISCUSSION: A territorial boundary should not be established between these two utilities. The public interest is not served by precluding the continuation of the existing process of resolving territorial disputes on a case-by-case basis. [Tr. 241, 243] If the Commission concludes that territorial boundaries must be established, it is important that such boundaries reasonably and adequately take into account the capabilities of existing electric service facilities, the economics of facilities expansion, and the type and character of the electric load that is to be served in particular areas from such facilities. [Tr. 173, 322-326, 511] It is important for the Commission to recognize that different types of electric facilities have differing capabilities with regard to type and character of electric load that can be served without changes to facilities. [Tr. 322-326] Therefore, a "lines on the ground" solution of this matter, if implemented, should follow the principles and concepts set forth in the direct testimony of Mr. Spangenberg with different boundaries established for different types and characters of loads. The proposals offered by GCEC and Mr. Bohrmann are not based on any determination of uneconomic duplication. They are aimed at preventing disputes at the expense of statutorily recognized customer choice and economical utility expansion. The territorial boundaries proposed by both GCEC and Mr. Bohrmann also lead to absurd results. As discussed herein previously, in many instances the proposed territorial boundaries would mandate uneconomic duplication of facilities. Moreover,

the proposed boundaries ignore the criteria that their proponents claim should be utilized to draw a territorial boundary. For example, GCEC claims that crossings are uneconomic duplication of facilities, a position unsupported by logic and in conflict with testimony of Gulf Power.

However, GCEC proposes a territorial boundary along Highway 279 in South Washington County that would require Gulf Power and GCEC to cross the facilities of each other to serve their assigned territories. The boundary is drawn such that Gulf Power Company would serve area to the west of Highway 279 and GCEC would serve areas to the east of Highway 279, where in fact the facilities of each of the two utilities are on the side of the boundary opposite from the assigned territory. The record contains many other examples where Mr. Gordon conveniently ignores one or more of his factors so as to apportion more area to GCEC. [Tr. 512-513] Neither of the proposed territorial boundaries are reasonable nor do they consider the most important mandate of this Commission: the avoidance of further uneconomic duplication of electric facilities.

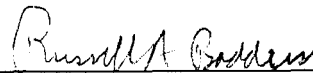
CONCLUSION

The Commission should not establish a territorial boundary between these two utilities in South Washington and Bay Counties. The Commission's present system for resolving territorial disputes is adequate to resolve any future disputes that may arise between GCEC and Gulf Power. The Commission should seek a resolution of this matter through mechanisms other than drawing "lines on the ground." The fact that the subject of territorial boundaries has been addressed, and rejected, by the Florida legislature is compelling evidence that the legislature does not support territorial boundaries for electric utilities in the state of Florida. [Tr. 99, 161-162] Customer choice for initial electric supplier should be allowed unless, in that particular instance, uneconomic duplication of electric facilities would result. During the hearing of this matter, both the Bay County Commission and the Panama City Port Authority expressed a strong desire to receive electric service from their current supplier, Gulf Power Company. The greater reliability and lower rates of Gulf Power were the reasons underlying the preference of the Bay County Commission. The Florida Supreme Court's holding in Gulf Coast supports customer choice where no uneconomic duplication of facilities would occur and holds that not all duplication is uneconomic.

GCEC and Mr. Bohrmann's proposed territorial boundaries would prematurely determine the electric supplier of an area drastically long before electric service is requested without knowing and accounting for conditions that may change. [Tr. 511-512] Consumers would be better served if the Commission directed each utility to follow Commission imposed guidelines for line extension to new customers, based on the Commission's "lowest cost to the utility" policy historically used in resolving territorial disputes. Refinements to the Commission's

existing guidelines and policies such as those set forth in Exhibit GEH-3 or Exhibit GEH-4 [Composite Exhibit 5] would enhance the ability of the two utilities to work out potential disputes without the need for active litigation before the Commission.

Respectfully submitted this 11th day of September, 1997.



JEFFREY A. STONE

Florida Bar No. 325953

RUSSELL A. BADDERS

Florida Bar No. 7455

Beggs & Lane

P. O. Box 12950

(700 Blount Building)

Pensacola, Florida 32576-2950

(904) 432-2451

Attorneys for Gulf Power Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition to resolve territorial dispute with Gulf) Docket No. 930885-EU
Coast Electric Cooperative, Inc. by Gulf Power Company.) Filed: September 12, 1997

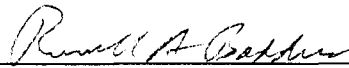
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U. S. Mail this 11th day of September 1997 on the following:

Bob Elias, Esquire
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

John H. Haswell, Esquire
Chandler, Lang & Haswell, P.A.
P.O. Box 23879
Gainesville, FL 32602

J. Patrick Floyd, Esquire
P.O. Box 950
Port St. Joe, FL 32456



JEFFREY A. STONE
Florida Bar No. 325953
RUSSELL A. BADDERS
Florida Bar No. 7455
Beggs & Lane
P. O. Box 12950
(700 Blount Building)
Pensacola, Florida 32576-2950
(904) 432-2451
Attorneys for Gulf Power Company