BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by City of Parker for declaratory statement concerning City's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City, and running across St. Andrew Bay.	DOCKET NO. 030159-EU ORDER NO. PSC-03-0598-DS-EU ISSUED: May 12, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DENYING MOTION TO DISMISS, GRANTING IN PART AND DENYING IN PART REQUEST FOR ORAL ARGUMENT, AND GRANTING PETITION FOR DECLARATORY STATEMENT

On February 11, 2003, the City of Parker filed a Petition for Declaratory Statement. The question presented by the City is:

> Does the jurisdiction of the Florida Public Service Commission preempt the City of Parker's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances, to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City and running across St. Andrew Bay?

On March 10, 2003, Gulf Power Company filed 3 documents:

1) a Petition to Intervene;

2) a Request for Oral Argument to Address the Commission at Agenda and/or Section 120.57(2) Hearing; and,

3) a Motion to Dismiss, or in the Alternative, Response in Opposition to City of Parker's Petition for Declaratory Statement ("Motion to Dismiss and Response in Opposition").

By letter dated March 12, 2003, the City stated that it did not oppose Gulf's intervention or the request for oral argument. The Petition to Intervene was granted in Order No. PSC-03-0371-PCO-EU. On March 17, 2003, the City filed a Motion for Extension of Time to respond to Gulf's Motion to Dismiss and Response. Gulf did not file an objection to that Motion. On March 19, 2003, the City filed its Reply to Gulf Power Company's Motion to Dismiss. The Motion for Extension of Time was granted by Order PSC-03-0461-PCO-EU issued on April 2, 2003.

This Order addresses the Request for Oral Argument, the Motion to Dismiss, and the Petition for Declaratory Statement and Response in Opposition.

Notice of receipt of the Petition for Declaratory Statement was published in the February 28, 2003 issue of the Florida Administrative Weekly.

REQUEST FOR ORAL ARGUMENT

Oral Argument was granted on the Petition for Declaratory Statement and denied on the Motion to Dismiss. We found that the issues raised by the Petition were complex and that oral argument would therefore aid us in comprehending and evaluating those issues. We found that the issues raised by the Motion to Dismiss were straightforward and that our understanding of the issues would therefore not be aided by oral argument.

MOTION TO DISMISS

The arguments presented in Gulf's Motion to Dismiss are provided below and are followed by those of the City in its Reply, and then our ruling.

Gulf's Motion to Dismiss

Gulf contends that we do not have authority to resolve the question presented by the City. Gulf explains that answering the question requires a balancing of state supremacy versus home rule powers, and analysis of the interplay between Chapters 366 and 163 (land development regulation), 166 (home rule powers of municipalities) and 380 (land and water management), Florida Statutes. Gulf further contends that the question presented has already been decided in Florida Power Corporation v. Seminole County and City of Lake Mary, 579 So. 2d 105 (Fla. 1991) [hereinafter Seminole].

Gulf views the City's Petition for Declaratory Statement, along with its other actions, as an attempt "to force the subaqueous installation of the line, with no apparent intention of paying the cost." Therefore, Gulf believes that the true issue presented is "whether there can be any application of the City's municipal powers to force the underground (or underwater) installation of the transmission line at the Company's expense."

Gulf explains that Section 120.565(1), Florida Statutes, allows substantially affected persons to "seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." Gulf argues that implicit in the statute is that the subject matter of the declaratory statement must be within the agency's jurisdiction.

It is Gulf's position that Chapters 163, 166 and 380, Florida Statutes, are outside of our jurisdiction. Gulf explains that an agency's jurisdiction is strictly limited to the authority conferred upon it by statute, and that agencies do not have authority to adjudicate claims involving matters outside their jurisdiction. East Central Reg. Wastewater Facilities Board v.

City of West Palm Beach, 659 So. 2d 402, 404 (Fla. 4th DCA 1995). It is Gulf's position that because the question to be resolved requires us to determine whether Chapter 366 preempts statutes to be implemented by other governmental entities, we cannot address the question.

In addition, Gulf claims that a determination of whether local home rule powers of a municipality are preempted by state law is a constitutional question under Article VII, Section 2 of the state constitution, and must be resolved by the courts. Myers v. Hawkins, 362 So. 2d 926, 928 (Fla. 1978). Gulf also contends that to answer the City's question we would have to consider Gulf's rights under its Franchise Agreement with the City, another constitutional question. Gulf notes that in the past, we have not resolved questions of preemption. See e.g., Seminole.

The City's Reply to Gulf's Motion to Dismiss

The City believes that Gulf misapprehends the reason the City seeks a declaratory statement. The City therefore explains that the City Council has not voted on Gulf's application for a development permit to upgrade and relocate the line, and has not made any determination as to consistency of the proposal with the Comprehensive Plan. The City points out that had any decision been made, a declaratory statement would be superfluous. The City petitioned for a declaratory statement because it seeks guidance in making those decisions.

The City contends that Gulf's Motion to Dismiss is internally inconsistent. Gulf argues that we lack jurisdiction to issue a declaratory statement, but Gulf also argues that we have jurisdiction over rates and service under Section 366.04(1), Florida Statutes. In other words, Gulf concedes our jurisdiction and then asks us not to exercise it.

The City also contends that Gulf's Motion contradicts Gulf's stated goal of providing power to Tyndall Airforce base on a timely basis. Gulf indicates that there is a need to complete the lines prior to the summer of 2003. However, by contesting the City's declaratory statement, Gulf may force the City to litigate the issue, a process that will take much longer than issuance of a

declaratory statement. Gulf has suggested that the City simply accept Gulf's interpretation of our jurisdiction and issue a "rubber stamp" approval of the proposed aerial lines.

The City states that the central issue it put forth in its Petition was whether our jurisdiction preempts the application of the City's Comprehensive Plan and regulations, codes and ordinances promulgated thereunder (collectively referred to as land use laws). Contrary to Gulf's assertions, the City explains that the land use laws derive from statutory grants of authority, not constitutional grants. The relevant statutes are Chapters 163 and 380, Florida Statutes, both implemented by the Department of Community Affairs.

The City argues that the question in its Petition was not decided in Seminole. In Seminole, a right-of-way (ROW) was being altered, and relocation of aerial electric lines was required. An affected city issued an ordinance requiring that the electric lines be relocated underground. Therefore, the City of Parker explains, Seminole focused on the conflict between Sections 337.403(1) and 366.04, Florida Statutes. The City also argues that its case is distinguishable from Seminole because here Gulf initiated relocation of the lines, and the lines are located on private property within the City, not a city ROW.

The City further argues that we determine how to apply our grant of jurisdiction, and such determination can only be overturned when a court finds it clearly erroneous. Panda-Kathleen, O.P./Panda Energy Corporation v. Clark, 701 So. 2d 322 (Fla. 1997); Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So. 2d 716 (Fla. 1993). The City states that this declaratory statement is sought under a specific factual scenario in an effort to avoid costly administrative litigation, and to resolve ambiguities, both goals justifying the issuance of a declaratory statement. Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach, 474 So. 2d 374 (Fla. 1999).

In concluding, the City notes that "the public's interest is served in encouraging agency responsiveness in the performance of their functions." Investment Corp. at 384. See also St. John's River Water Management District v. Consolidated-Tomoko Land Co.,

717 So. 2d 72 (Fla. 1st DCA 1998) *rev. den.* 727 So. 2d 904 (Fla. 1999), and Chiles v. Department of State, Division Of Elections, 711 So. 2d 151 (Fla. 1st DCA 1998).

Ruling

Section 120.565(1), Florida Statutes provides:

> Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

In addition, factual statements in the Petition may be accepted as true, without adopting a position on the validity of the facts. Rule 28-105.003, Florida Administrative Code.

The City indicates that its land use laws implement Chapters 163 and 380, Florida Statutes. We assume that those two statutes do in fact give the City authority to adopt and enforce its land use laws. All other facts presented by the City are also taken to be true.

We are free to interpret those statutes that we must, in order to address questions relating to the implementation of the statutes we administer. See Chiles v. Milligan, 711 So. 2d 151, 155 (Fla. 1st DCA 1998) (acknowledging that the Department of State interpreted statutes that it did not implement in order to issue a declaratory statement involving its own statutes, without faulting the agency for taking such action); Mortham v. Milligan, 704 So. 2d 152, 157 (Fla. 1st DCA 1997). Thus, even if we assume, as Gulf suggests, that resolution of the City's question requires us to interpret laws that we do not implement, the Petition still would not have to be dismissed for lack of subject matter jurisdiction.

In any case, to answer the City's question, we do not have to interpret statutes implemented by other agencies. The question presented was resolved in Seminole, a case which construes provisions of Chapter 366. Therefore, we must interpret Chapter

366 and apply Seminole. Neither is beyond our subject matter jurisdiction, and for this reason we deny the Motion to Dismiss.

PETITION FOR DECLARATORY STATEMENT

The question presented by the City is:

> Does the jurisdiction of the Florida Public Service Commission preempt the City of Parker's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances, to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City and running across St. Andrew Bay?

The City explains that the question arises from the need of Tyndall Air Force Base, a Gulf customer, for additional power. Currently Gulf serves Tyndall through an existing subaqueous dual-circuit 46,000 volt transmission line beneath St. Andrew Bay. The City states that Gulf proposes to remove this line from active service and replace it with two aerial horizontal circuits (four lines) of 115,000 volts per circuit. The line would be supported by two concrete poles in shallow water of the Bay and two concrete poles in deeper water. Gulf would also have to use private property in the City for a construction ramp and additional transmission facilities. The land is designated as a Conservation Land Use District.

At public hearings held by the City on Gulf's proposal, the response was "overwhelmingly" negative. The City reports the public was concerned that their rates would increase, and that the aerial lines would adversely affect public health, safety and welfare, property values, and the aesthetic qualities of the shoreline and Bay. Harbor pilots and boat captains testified that the poles would be navigational hazards prohibited by Section 403.813, Florida Statutes, and Section 61-312.050, Florida Administrative Code.

As a result of the information obtained at the hearings, the City Council imposed a moratorium on the review or issuance of

applications like Gulf's. The moratorium was in effect until April 13, 2003. The City asked that its Petition be addressed before that date. The County also held hearings and enacted a resolution requesting that Gulf install subaqueous lines.

The City further explains that Gulf has two permit applications for the work pending. One application is for a development permit that the City issues pursuant to Chapter 163, Florida Statutes. The City wants to know if it is preempted by our authority from issuing a decision on this permit application. The other permit is issued jointly by the Department of the Army and the Florida Department of Environmental Protection. That application will remain pending until the City takes action on the development permit.

The City states that Gulf told the City that if the 115 kv lines were installed subaqueously, the City would have to pay the difference in cost between overhead and underwater lines. The City says Gulf relies on In re: Petition for Approval of Local Government Underground Cost Recovery Tariff by Florida Power Corporation, Docket No. 020993-EI, Order No. PSC-02-1629-TRF-EI, which establishes a mechanism for local governments to recover costs of converting overhead lines to underground lines. The City believes this Order is not applicable because the City is not asking to convert the lines but has been asked to review Gulf's decision to install overhead lines. The City explains that the Order does not address the state-imposed review process that is implemented by the City's land use laws, and that enables the City to either grant or deny Gulf's development permit application for the new lines.

The City states that Gulf also relies on Seminole for the proposition that the our authority to regulate rates and services preempts the City's authority to grant or issue Gulf's application for a development permit. The City contends that Seminole is not applicable because the issue was whether a local government could require undergrounding within its ROW. Gulf's line is located on private property in the City, not an ROW.

The City explains that, upon mandate from the State in Chapter 163, it enacted a Comprehensive Plan establishing land uses for

upland areas and setting forth requirements and restrictions on the land use districts within the City. The City cites the following policies and objectives from the Comprehensive Plan, as being relevant to the question presented.

> Policy 1.2.3: The City shall use this Plan and its land development regulations to promote compatibility of adjacent land uses and reduce the potential for nuisances.
>
> Objective 1.7: Include provisions for public utility crossings, easements, or rights-of-way in the Land Development Regulations.
>
> Policy 1.7.1: The City shall establish provisions to allow needed land area for public utilities provided the location of such facilities does not create a threat to public health or safety or otherwise cause a public nuisance. (Emphasis added by the City).
>
> Policy 1.7.2: The City shall coordinate with legally established public utilities or public works consistent with the provisions of Chapter 361 and Chapter 362, F.S., and as provided in local franchise agreements, to provide land needed location of utilities facilities.

These policies and objectives are implemented in the City's Land Development Regulations, codes, and ordinances.

The City further explains that in Section 380.21(3), Florida Statutes, the Legislature indicates that state land and water management issues should be implemented by local governments to the maximum extent possible. Accordingly, the City has enacted codes and ordinances that require structures in coastal waters to be permitted. The permitting process includes an evaluation of whether the project is in the public interest.

The City states that Gulf has elected not to apply for certification under the Transmission Line Siting Act, Sections 403.52 - 403.5365, Florida Statutes, and the line is otherwise

exempt from that Act because it is less than 15 miles long and in one county. Section 403.524(3), Florida Statutes, states:

> The exemption of a transmission line under this act does not constitute an exemption for the transmission line from other applicable permitting processes under other provisions of law or local government ordinances. (Emphasis added by the City.)

The City notes that had Gulf sought certification under the Act, its proposal would have undergone a multi-jurisdictional review that would have included various provisions of the Comprehensive Plan. Specifically, the analysis would have to address Section 403.512, Florida Statutes, which requires that construction and maintenance of transmission lines consider "the goals established by the applicable comprehensive plan." The City also notes that comprehensive plans and zoning ordinances must be considered when applying for certification under the Florida Electrical Power Plant Siting Act. City of Riviera Beach v. Florida Department of Environmental Regulation, 502 So. 2d 1337 (Fla. 4th DCA 1987).

Finally, the City argues that we acknowledged the limits of our jurisdiction in In re: Complaint Against Florida Power & Light Company Regarding Placement of Power Poles and Transmission Lines by Amy and Jose Gutman, Teresa Badillo, and Jeff Lessera. Order No. PSC-02-0788-PAA-EI, issued June 10, 2002, in Docket No. 010908-EI. Specifically, we found we did not have jurisdiction to determine the private property rights of a utility's customers.

Gulf's Response in Opposition

Gulf believes we should resolve the question presented by finding, as the Florida Supreme Court did in Seminole, that any application of the City's municipal powers to require the subaqueous installation of the line encroaches on our exclusive jurisdiction over Gulf's rates and service.

Gulf first discusses the jurisdiction conferred by Chapter 366, Florida Statutes. Gulf points out that regulation of public utilities is an exercise of the police power of the state, Section

366.01, that we have exclusive jurisdiction to regulate rates and services of public utilities, Section 366.04(1), that we have jurisdiction over the planning, development, maintenance, and reliability of a coordinated grid, Sections 366.04(2)(c) and (5), and that we can require alterations to plant and facilities when needed to provide adequate service, Section 366.05(1).

Gulf argues that this statutory authority is diminished if the land development authority of cities is allowed to supersede it. Gulf illustrates this point with a hypothetical scenario. If we ordered installation of a transmission line between two substations in a city, but the city claimed the line conflicted with its land use laws and refused to allow it, the authority conferred by Chapter 366 becomes meaningless.

Gulf also supports its position by case law and our Orders. Gulf argues that the Seminole decision controls and holds that "a local government has no power to impose a requirement to convert existing aerial distribution lines to underground lines at the utility's expense." Gulf notes that the Court expressly stated that our authority to regulate rates and services of public utilities preempts city and county authority to require a utility to install its lines underground. Seminole at 107. The reason was that undergrounding affects rates. Id.

Gulf explains that the Seminole Court found a decision of the Missouri Supreme Court involving a city and a public utility to be persuasive. The decision was Union Electric Co. v. City of Crestwood, 499 S.W.2d 480, 483 (Mo. 1973). The Missouri decision invalidated the City of Crestwood's ordinance prohibiting construction of overhead lines. The ordinance was enacted under the City's general police powers. The Missouri Court reasoned that if all cities could enact and enforce such ordinances, capital costs would become excessive, and the statewide authority conferred by the legislature on the Missouri Public Service Commission would be nullified.

Gulf notes that there was a second episode in Crestwood's efforts to require undergrounding. See Union Electric Co. v. City of Crestwood, 562 S.W.2d 344 (Mo. 1978). Crestwood attempted to use its local zoning ordinances to deny an application for overhead

lines. The zoning ordinances were also struck down by the Missouri Court. The Court reasoned that the legislature intended for the state's Commission to have certain statewide authority, and that authority superceded local authority, be it police powers or zoning powers.

Gulf also relies on the *amicus* brief we filed in Seminole. Gulf states that the brief makes the following points: 1) local governments cannot demand undergrounding for free without encroaching on our jurisdiction; 2) the city and county are the cost causers in this case, and their position contravenes our policy that cost causers pay the direct costs of undergrounding; and, 3) if local governments are free to require undergrounding without bearing the cost, billions of dollars will go into rate base and be borne by the general body of ratepayers, regardless of whether they benefit.

Gulf reviews the history of the development of Rule 25-6.115, Florida Administrative Code, which pertains to charges for undergrounding distribution lines. We determined that we could not require undergrounding statewide because the information did not show it would be cost-effective on a statewide basis. See Order No. PSC-92-0975-FOF-EU, issued September 10, 1992, in Docket No. 910615-EU. We did however allow for undergrounding of distribution facilities in certain circumstances, provided that the cost would be paid by the person requesting the undergrounding. Gulf claims that these rules and the tariff filings they require make clear that we do not allow a utility to install underground lines at its own expense at the request of a local government.

Gulf attempts to refute the City's interpretation of certain cases and orders. The City contends that Seminole is not applicable because it involved relocation of lines on city and county ROWs. Gulf responds that local government has more control over ROWs than over activities that occur on private property or state-owned submerged lands, the implication being that if the city couldn't force undergrounding in its own ROWs then it cannot do so on private property.

Gulf states that the City relied on Order PSC-02-0788-PAA-EI as evidence of limits on our jurisdiction. Gulf finds that case,

which involved a customer asking us to relocate a transmission line, to be inapplicable because we did not evaluate our jurisdiction against that of local government. Rather, we found that we did not have jurisdiction to adjudicate claims for diminution of private property values.

Gulf explains that the City relies on The City of Riviera Beach v. Florida Department of Environmental Regulation, 502 So. 2d 1337 (Fla. 4th DCA) as support for the permitting process to include a review of zoning ordinances and comprehensive plans. This case involved the permitting of a resource recovery facility under the Power Plant Siting Act (PPSA), so it is not directly on point, as the City acknowledged. Gulf refutes the relevance of this case because the PPSA expressly requires, for power plants, that a hearing be held on local zoning and land use matters, and that the power plant comply with those regulations or obtain a variance from the Siting Board. However, for transmission lines that must comply with the Transmission Line Siting Act, a hearing on zoning is not required, and the role of local governments is limited to holding public meetings and filing reports on the effects of the transmission line on matters within the local government's jurisdiction.

Ruling

We find that our jurisdiction preempts the City's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances, with respect to Gulf Power Company's proposed aerial power transmission line.

Section 366.04(1), Florida Statutes, grants us authority to

> regulate and supervise each public utility with respect to its rates and service;...The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in each case of conflict therewith, all lawful acts, orders, rules and regulations of the commission shall in each instance prevail.

Section 366.05(1), Florida Statutes provides that in the exercise of our jurisdiction:

> The commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto;...and to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter.

These provisions make clear that we have a statutory responsibility to ensure that electric service is provided in an adequate, reliable and cost-effective manner. The Florida Supreme Court construed these provisions in Seminole.

In Seminole, a city and county relied on their home rule powers to enact ordinances requiring that an overhead transmission line be relocated underground, and that neither governmental entity would pay the cost difference of undergrounding. The overhead line was located in an ROW that had to be moved to accommodate widening of the road it flanked. The home rule powers are granted by the state constitution, and Chapters 125 and 166, Florida Statutes. Chapter 337, Florida Statutes, also relied on by the city and county, grants local governments broad authority in ROWs.

The utility sued the city and county in circuit court, and the court upheld the ordinances. The utility appealed to the Fifth District Court of Appeal, which certified the case to the Florida Supreme Court as one of great public importance that required immediate resolution.

The Florida Supreme Court held that the ordinances were invalid. In striking down the ordinances, the Court established the exclusivity of our jurisdiction, and provided the framework for analyzing preemption cases involving the requirements of local

governments for undergrounding of transmission lines. While the facts here are not identical to those in Seminole, we find that factual differences in the City's case do not distinguish it in a material way from Seminole. We find the rationale in Seminole and the analytical framework to be wholly applicable to the City's case, and for this reason, Seminole controls.

First, the Court explained that "cities and counties have no authority to act in areas that the Legislature has preempted." The Court then determined that the Legislature, through Sections 366.04(1) and 366.05(1), Florida Statutes, preempted to us regulation of rates and services provided by public utilities, and that the issue of whether to underground transmission lines fell within the regulation of rates, if not services. Seminole at 107. The Court reasoned that requiring underground lines affects rates, utilities are entitled to charge rates that provide a reasonable return on investment, and if a utility has to invest a lot of money in underground lines it will be reflected in rates. Id.

In short, the Court makes clear that the Legislature preempted regulation of rates to us, and the decision to require undergrounding falls within this exclusive area of our jurisdiction because it affects rates. This alone is a sufficient basis for a determination that our authority preempts the City's authority to issue development permits requiring undergrounding, because the cost of the undergrounding will affect rates.

In addition, the City has not identified any provision of Chapters 163 or 380 that casts doubt on our preemptive authority. The City cites provisions from its Comprehensive Plan, but a comprehensive plan adopted by a city cannot supersede the legislative grant of authority in Chapter 366, unless it is shown that the underlying statutory authority, Chapter 163, is superior. This has not been shown.

Second, the Supreme Court reasoned that if each local government had authority to dictate the type and location of transmission lines, costs could become unmanageable, and the statewide supervision and control granted to us would be nullified. Seminole at 107 (citing Union Electric Co. v. City of Crestwood, 499 S.W.2d 480, 483 (Mo. 1973)). If the authority of cities to

adopt comprehensive plans superseded our authority to regulate undergrounding of lines, we would have inconsistent requirements statewide, costs could be exorbitant, and our authority would be meaningless. This is exactly what the Seminole Court intended to avoid by finding that our authority preempted that of local governments with respect to undergrounding.

The City argues that Seminole does not control because that decision involved lines in an ROW, whereas the City's case involves lines on private property. The reasons for finding that Chapter 366 preempted local authority apply whether the transmission line is on an ROW or not. That is, the cost of undergrounding will affect rates regardless of the line's location, and allowing local governments to dictate issues of undergrounding, in ROWs or on private property, will result in inconsistency, high costs, and erosion of the benefit of our statewide authority.

Finally, the Court examined the broad authority over ROWs granted to local governments under Chapter 337. The Court determined that this authority did not preempt Chapter 366 because it did not grant local governments "the power to mandate the type of [transmission] system to be used by a utility or to determine who should pay for such a system." Seminole at 108. As was noted above, the City does not identify any statutory provision in Chapters 163 or 380 that grants such authority to local governments. Absent such a grant, the Seminole decision dictates that Chapter 366 is preemptive with respect to such issues.

For the reasons above, we declare that our jurisdiction preempts the City of Parker's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances, with respect to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City and running across St. Andrew Bay.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss filed by Gulf Power Company is denied. It is further

ORDERED that the Petition for Declaratory Statement filed by the City of Parker is granted consistent with our findings in the body of this Order that the jurisdiction of the Florida Public Service Commission preempts the City of Parker's application of its Comprehensive Plan, Land Development Regulations, and City Codes and Ordinances, with respect to Gulf Power Company's proposed aerial power transmission line planned to travel from private property located within the City, crossing the shoreline of the City and running across St. Andrew Bay. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th Day of May, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as

well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.