

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In the Matter of

Petition to Resolve
Territorial Dispute
with Gulf Coast
Electrical Cooperative,
Inc. by Gulf Power
Company.

DOCKET NO. 930885-EU



PROCEEDINGS: PRE-PREHEARING CONFERENCE

BEFORE: CHAIRMAN SUSAN F. CLARK
Prehearing Officer

DATE: Monday, July 29, 1996

TIME: Commenced at 1:40 p.m.
Concluded at 2:30 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NUMBER-DATE

1 **APPEARANCES:**

2 **JEFFREY A. STONE and RUSSELL BADDERS,**
3 Beggs & Lane, 700 Blount Building, 3 West Garden
4 Street, P. O. Box 12950, Pensacola, Florida
5 32576-2950, Telephone No. (904) 432-2451, and **JOSEPH**
6 **P. CRESSE,** Class B Practitioner, Messer, Vickers,
7 Caparello, Madsen, Goldman & Metz, P.A., 215 South
8 Monroe Street, Tallahassee, Florida 32301, Telephone
9 No. (904) 222-0720, appearing on behalf of **Gulf Power**
10 **Company.**

11 **JOHN H. HASWELL,** Chandler, Lang & Haswell,
12 211 Northeast First Street, Gainesville, FLorida
13 32601, Telephone No. (940) 376-5226, and **JOHN P.**
14 **FLOYD,** 408 Long Avenue, Port St. Joe, Florida 32456,
15 Telephone No. (904) 227-7413, appearing on behalf
16 **Gulf Coast Electric Cooperative, Inc.**

17 **VICKI JOHNSON,** Florida Public Service
18 Commission, Division of Legal Services, 2540 Shumard
19 Oak Boulevard, Tallahassee, Florida 32399-0870,
20 Telephone No. (904) 413-6199, appearing on behalf of
21 **the Commission Staff.**

22 **ALSO PRESENT:**

23 **ROBERTA BASS,** FPSC Division of Electric & Gas
24
25

P R O C E E D I N G S

(Hearing convened at 1:40 p.m.)

CHAIRMAN CLARK: We'll call the pre-prehearing to order. Do you have a notice?

MS. JOHNSON: Yes. By notice issued July 17, 1996, this preliminary prehearing conference was set in Docket 930885-EU, in Re: Petition to Resolve Territorial Dispute with Gulf Coast Electric Cooperative by Gulf Power Company.

CHAIRMAN CLARK: Let's take appearances.

MR. FLOYD: Patrick Floyd, Gulf Coast Electric Cooperative.

MR. HASWELL: John Haswell, Gulf Coast Electric Cooperative.

MR. STONE: Jeffrey A. Stone, with me is Russell Badders. We're both from the law firm of Beggs and Lane. Also in attendance is Joe Cresse, a Class B Practitioner, and we're representing Gulf Power Company.

MS. JOHNSON: Vicki Johnson on behalf of the Commission Staff.

CHAIRMAN CLARK: Ms. Johnson, why are we here?

MS. JOHNSON: Chairman Clark, this matter is currently set for a hearing in February of 1997.

1 There's been some disagreement between the parties
2 regarding the scope of the issues. We have today
3 Staff's preliminary issues for Docket 930885, along
4 with Gulf's proposed revisions to Staff's issues and
5 additional issues that have been proposed by Gulf
6 Power Company. Staff has requested this preliminary
7 prehearing conference in a effort to simplify and
8 resolve the issues to aid us in discovery as we
9 proceed to the hearing.

10 **CHAIRMAN CLARK:** Okay. So what we need to
11 do is reach a resolution as to what the issues are
12 going to be in this case. Is that correct?

13 **MS. JOHNSON:** That's correct.

14 **CHAIRMAN CLARK:** And how should I start?
15 Should I start with Mr. Stone, because it is
16 apparently Gulf Power who takes issue with what the
17 issues currently are, and would like to propose -- to
18 have the Staff's preliminary issues revised and would
19 also like to add some issues. Mr. Stone.

20 **MR. STONE:** Thank you. Commissioner, I
21 believe you have a document that we handed out at a
22 workshop or a conference between the Staff and the
23 parties. If my recollection serves me correctly, it
24 was dated May 14, 1994.

25 **CHAIRMAN CLARK:** That's the one I have.

1 **MR. STONE:** As you indicated, we have taken
2 the preliminary list of issues that Staff circulated.
3 We have made some minor editing to several of the
4 issues. It was more significant editing to Issue 6.
5 And in the way that we reworded Issue 6, it eliminated
6 the need for Issue 7.

7 Basically it is our position that the issue
8 should be framed in such a way as it does not
9 presuppose the outcome, and we were attempting to be
10 sure that the Commission actually considered the
11 question of whether a territorial boundary should be
12 drawn. That question has not yet been heard, and it
13 is for that reason that we felt like it was important
14 that the issues be framed in such a way that Gulf
15 would have an opportunity to present evidence in
16 support of its position in that regard.

17 Similarly, the added issues that we listed,
18 which are on the bottom of that page, Issues 1 through
19 7 are intended to allow the parties to address the
20 policy questions that are behind whether the
21 Commission should, in fact, draw lines on the ground.

22 Since the submission of those proposed
23 revisions, and those additional issues, the Supreme
24 Court has, of course, ruled on the award of the
25 prison, and we believe that the Supreme Court's ruling

1 has made it clear that drawing lines on the ground is
2 not a viable solution given the jurisdiction of the
3 Commission. And we have since filed a motion to
4 dismiss. It's my understanding the time frame for
5 response to that motion has not yet expired.

6 **CHAIRMAN CLARK:** Let me back you up a
7 minute. The case has made it clear that drawing lines
8 on the ground is not a viable solution to resolving
9 territorial disputes.

10 **MR. STONE:** No. And I'm sorry if that's the
11 way what I said sounded. That's not what I meant to
12 say. Certainly, the parties can enter into
13 territorial agreements that include lines on the
14 ground. The fundamental question, I think, that is
15 before the Commission is whether or not when the
16 parties are unable to reach an agreement on their own,
17 whether the Commission has the authority to impose
18 territorial boundaries on its own motion.

19 **CHAIRMAN CLARK:** And you're saying the case
20 makes it clear that we do not?

21 **MR. STONE:** That is correct.

22 **CHAIRMAN CLARK:** Okay.

23 **MR. STONE:** And our issues were simply
24 designed to address whether or not from a policy
25 standpoint you should, and then subsequently we filed

1 a motion to dismiss to deal with the question of
2 whether you can.

3 **CHAIRMAN CLARK:** That's the subject of the
4 motion to dismiss?

5 **MR. STONE:** That is correct. And as I
6 indicated, the time period for response has not yet
7 run, so that would not be ripe for a decision at this
8 point.

9 **CHAIRMAN CLARK:** Okay. Anything else?

10 **MR. STONE:** At your pleasure.

11 **CHAIRMAN CLARK:** Mr. Haswell and Mr. Floyd.

12 **MR. FLOYD:** Thank you. I'll respond first
13 because John is catching up a little bit on where we
14 are here, having just come in from out of town.

15 Essentially, we reviewed the Staff's
16 preliminary issues. And in looking at them agree that
17 they exactly track what was set forth in the
18 Commission's order and clarifying order. The
19 clarifying order being the one that was issued on July
20 the 27th, 1995.

21 Specifically -- and I think in terms of
22 simplifying the issues, we have gotten them down, I
23 believe, to two. Although there are a number of them
24 that are encompassed here.

25 Essentially, the questions are how should

1 the Commission go about establishing the territorial
2 boundary between the two, drawing the line on the
3 ground, and then where should it be established?

4 I think that the argument, not only
5 regarding the issues, the change in the wording of the
6 issues, but also in the motion to dismiss submitted by
7 Gulf Power, goes back to the same challenge that they
8 have always maintained in this case, which is that
9 they do not want to and will oppose drawing of a
10 boundary line on the ground.

11 The clarifying order says that -- the order
12 does intend to establish a territorial boundary in the
13 areas identified in the record where the utility's
14 facilities are commingled or are in close proximity,
15 and where further territorial conflict and uneconomic
16 duplication of facilities is likely to occur. And on
17 the last page it says where "where facilities are
18 commingled or are in close proximity and where further
19 conflict is likely."

20 I believe those set the stage. And then we
21 went about establishing the areas where there was a
22 dispute, and those maps were isolated by the parties,
23 signed and then submitted to the Commission. And
24 we've gone over those. And I'll get into it a little
25 bit later. There are some ones that need to be added

1 to that particular list that was issued on May the
2 28th. But that pretty much defines the areas of
3 dispute, commingled, close proximity; where conflict
4 is likely to occur a boundary line is to be drawn.

5 Going from there, the boundary -- how you
6 determine the boundary line and then establishing it?

7 And I think through experience, certainly in
8 other jurisdictions and the experiences that Gulf
9 coast has been in, there are certain criteria that are
10 used in determining a boundary line. And I don't
11 think they need to be gone over at this time, but, you
12 know, such items as -- such areas as natural
13 geographical boundaries, the location and duration of
14 service of existing distribution facilities, etcetera.

15 So we think that they are pretty much in
16 order. And I think to state it distinctly and
17 succinctly, simplifying the matters here would be just
18 to move forward would simplify them and to get into
19 the area of providing the information which is what
20 we're trying to do.

21 **CHAIRMAN CLARK:** Mr. Haswell, do you have
22 anything to add?

23 **MR. HASWELL:** Shakes head.

24 **CHAIRMAN CLARK:** Let me ask Staff a
25 question. When you have in your issue, you have Issue

1 6, "How should the Commission establish, and then
2 where is Issue 7? What did you have -- what was your
3 thinking behind having "how"? What kinds of facts go
4 into determining how?

5 **MS. JOHNSON:** I'll defer to Roberta Bass on
6 that issue.

7 **MS. BASS:** I think that we were expecting
8 that there could be several different methods in
9 establishing a boundary, whether it's done on the
10 number of customers in a particular area, whether it's
11 done on revenues, whether it was done on location of
12 facilities. It was more or less a different -- on
13 what basis would we establish the territorial
14 boundary; not whether or not a territorial boundary
15 would be established because we've already been
16 directed by the Commission to establish a territorial
17 boundary. But it was framed in those words because we
18 thought there were a lot of different ways that that
19 boundary could be established, and that would cover
20 all of the information that we would need to get in
21 order to come up with a method for establishing, you
22 know, looking at perhaps an equidistance theory, as
23 was in some proposed legislation, or, you know,
24 different -- we wanted to be able to look at several
25 different methods.

1 **CHAIRMAN CLARK:** Mr. Stone, let me ask you a
2 question. It seems to me that the order is fairly
3 clear, on the one issued in July, that we intend to
4 set territorial boundaries; and, therefore, how the
5 Staff has worded the issues is the correct way to word
6 them. And I guess my question to you is what in the
7 order leads you to believe that there is still a
8 debate?

9 **MR. STONE:** Commissioner, first, we have not
10 had a hearing on whether it is wise to establish a
11 boundary.

12 **CHAIRMAN CLARK:** Let me back you up on that.
13 It seems to me that there is a statute and
14 rules that call for setting boundaries.

15 **MR. STONE:** I respectfully disagree. The
16 statute calls for the Commission to exercise its
17 jurisdiction to prevent the further uneconomic
18 duplication of facilities. That may entail a boundary
19 if the parties agree. And certainly the Commission
20 has a statute that says it has authority to review and
21 approve boundaries if, in fact, the parties do agree
22 on a territorial boundary. What we're talking about
23 here is where the parties have been unable to
24 negotiate a boundary between themselves and,
25 therefore, have no agreement to bring before the

1 Commission for approval of whether or not the
2 Commission, in exercising its jurisdiction to prevent
3 the further uneconomic duplication, can impose a
4 territorial boundary. In this regard the Supreme
5 Court's recent ruling certainly changes the state of
6 the law as it existed when your original order was
7 issued and how it exists today.

8 **CHAIRMAN CLARK:** All right. Well, let me
9 ask you a question. What does the statute say on the
10 ability of the Commission to declare territorial
11 disputes?

12 **MR. STONE:** I apologize, I don't have a copy
13 of the statute in front of me.

14 **MS. JOHNSON:** The statute reads, and it is
15 Section 366.04(2)(e) -- (2)(d), and it says "to
16 approve territorial agreements between and among rural
17 electric cooperatives, municipal electric utilities
18 and other electric utilities under its jurisdiction.
19 However, nothing in this chapter shall be construed to
20 alter existing territorial agreements as between the
21 parties to such agreements". That's the section of
22 the statute regarding the jurisdiction of the
23 Commission.

24 The statute further says that "The
25 Commission shall have further jurisdiction over the

1 planning, development and maintenance of a coordinated
2 electric power grid throughout Florida to assure an
3 adequate and reliable source of energy for operational
4 and emergency purposes in Florida and the avoidance of
5 further uneconomic duplication of generation,
6 transmission and distribution facilities." So the
7 Commission can, pursuant to the statute, declare a
8 territorial dispute and to resolve it. That is also
9 consistent with the rule.

10 **MR. STONE:** Commissioner, if I may. I'm not
11 disputing your ability to declare a territorial
12 dispute and resolve it. My question is whether the
13 resolution is a territorial boundary. We certainly
14 believe that there are other mechanisms that the
15 Commission can use to resolve a territorial dispute
16 declared on its own motion, but that that solution may
17 not include a territorial boundary. And, in fact, in
18 light of the Supreme Court's recent ruling, a
19 territorial boundary, absent voluntary agreement
20 between the parties, is impractical in that it would
21 do harm to the principles that the Supreme Court found
22 that basically --

23 **CHAIRMAN CLARK:** What are those principles?

24 **MR. STONE:** That \$15,000 of extra
25 expenditure by one utility over what would have been

1 spent by the other does not constitute uneconomic
2 duplication. By its very nature that ruling means you
3 can't draw a single line. You would have to have an
4 area, if you will, that is a -- I liken it to a
5 demilitarized zone that is as wide as it takes for one
6 utility to spend more than \$15,000 than the other, and
7 in that area, according to the Supreme Court's
8 decision, you have customer choice. It is those
9 issues that we believe need to be fully explored
10 before the panel in this case, and that's why we have
11 those other issues as to whether or not it is
12 appropriate to draw a line. That issue has not been
13 litigated before. We have not been heard in
14 opposition to that.

15 **MR. FLOYD:** Commissioner Clark, if I may
16 respond to that.

17 **CHAIRMAN CLARK:** Mr. Floyd.

18 **MR. FLOYD:** Thank you. First, I believe
19 that the essence of one of the provisions in that
20 statute says that the Commission can, on its own
21 motion, where there is a disputed area, resolve the
22 matter.

23 **CHAIRMAN CLARK:** I thought that's what the
24 statute said, but I didn't hear you read that.

25 **MS. JOHNSON:** I don't remember reading that.

1 So that the record is clear, it is 366.042(e), "To
2 resolve competition of a utility or on its own motion
3 any territorial dispute involving service areas
4 between and among rural electric cooperatives,
5 municipal electric utilities and other electric
6 utilities under its jurisdiction."

7 **CHAIRMAN CLARK:** Now, just so I'm clear,
8 Mr. Stone, you say that does not give us the authority
9 to draw a line.

10 **MR. STONE:** Not if you can resolve that
11 dispute in any fashion less onerous than drawing a
12 line.

13 **CHAIRMAN CLARK:** Mr. Holland, why don't you
14 come right up here and join in this. And, Mr. Cresse,
15 if you'd like to do it by all means come up. This is
16 not a regular prehearing, and I'd rather do that than
17 have you shake your heads when something is said.

18 **MR. HOLLAND:** I apologize if I was shaking
19 my head.

20 **CHAIRMAN CLARK:** It wasn't you. It was
21 Mr. Cresse. Go ahead, Mr. Holland.

22 **MR. CRESSE:** I think it was something
23 Patrick was saying.

24 **MR. HOLLAND:** Madam Chairman, my name is Ed
25 Holland, by the way. I'm vice president of generation

1 and transmission for Gulf Power.

2 For years Gulf Power Company maintained that
3 there was a level of duplication that was not
4 uneconomic. The cooperatives fought us on that tooth
5 and nail. For years we maintained that customer
6 choice should be given serious consideration and
7 ultimately the Commission agreed with us and that was,
8 in fact, put in the rule. And as the Supreme Court
9 noted in its decision, that is when all other things
10 are equal, in the case of the Supreme Court decision
11 they determined that \$15,000 or less, all things are
12 equal, and customer choice should be considered.

13 The point that I would make here with
14 respect to the statute is that the statute says when
15 there is a dispute between the parties. I think the
16 question that the Commission needs to answer, and
17 especially in light of the Supreme Court decision,
18 needs to answer is there a disputed area?

19 I would submit to the Chairman that given
20 the Supreme Court decision, the areas which the
21 Commission Staff has designated or intends to
22 designate as areas of commingling and duplication,
23 that either party could very likely serve the
24 majority, the vast majority of customers located in
25 that area for less than \$15,000, which by definition

1 in the court's decision is not uneconomic. And I
2 would submit to you, therefore, that there is not a
3 dispute there.

4 **CHAIRMAN CLARK:** So you are saying that
5 there is some threshold of spending money; that even
6 though it is a duplication, it's not uneconomic.

7 **MR. HOLLAND:** And I would suggest that the
8 Commission look at -- and I think a good case in
9 point, since, I think, the early '70s, '70, '71, in
10 the state of Georgia, there was a determination made
11 there that for loads above 900 kW there was no level
12 of uneconomic duplication. And I think, yes, from a
13 engineering standpoint, from a cost standpoint, and I
14 think the co-op would find it very difficult to argue
15 in this case that what they did was not uneconomic.
16 They feel very strongly that what they did was an
17 economic -- and I think we would all agree it's a
18 duplication, but it is not an uneconomic duplication
19 and I agree with them.

20 **CHAIRMAN CLARK:** Well, it is uneconomic in
21 the sense that two parties had to spend money that --
22 somebody is not going to get that money back.

23 **MR. HOLLAND:** Well, we didn't spend any
24 money.

25 **CHAIRMAN CLARK:** Well, I read the case a

1 little differently than you, Mr. Holland. And I don't
2 think it sets a threshold of \$15,000 as being --
3 meaning it is economic duplication.

4 Mr. Floyd, I did interrupt you. You were
5 going to speak to the notion of whether or not when we
6 declared a dispute, that we could set boundary lines.

7 **MR. FLOYD:** Yes. That particular statute
8 establishes that. And certainly gives the Public
9 Service Commission all of the jurisdiction that it
10 needs to be able to accomplish that statutory purpose.
11 There's no limitation in there to specify that a
12 boundary line cannot be used as one of the tools by
13 the mission to achieve that purpose. In fact, it's
14 been recognized among those utilities who have been
15 able to work together and establish a boundary line
16 that it is the most effective way of doing that.

17 Certainly when we look and listen to what
18 the Supreme Court said in their arguments and their
19 questions at the hearing, at the oral argument on this
20 case, one of the messages that came loud and clear was
21 that the Public Service Commission needs to establish
22 and follow through with a basis of resolving these
23 type of continuing problems before they come back to
24 the Supreme Court.

25 Now, the order that was issued by the Public

1 Service Commission -- in addition to that general
2 jurisdiction, the order that was issued and the
3 clarifying order both specify that there are disputed
4 areas. That part of the order was not appealed by
5 Gulf Power. In addition to that, the order states
6 that there will be a determination by the setting of a
7 boundary line in those areas where the facilities are
8 commingled or in close proximity, and where future
9 conflict may occur. That was not appealed. And I
10 think that that's where we are here in the case. That
11 it seems to be simply stated an effort to reargue
12 either before the Supreme Court or before this
13 Commission when in all certainty we should be moving
14 forward with the determination of those areas and
15 submitting the facts. Because, in addition to those,
16 we have, through the course of discovery here,
17 submitted maps that everybody signed that were
18 encompassing the disputed areas.

19 **CHAIRMAN CLARK:** Let me ask you a question:
20 It seems -- the basis of your response to Gulf Power
21 that if they took issue with us drawing the lines,
22 that it should have been as part of the appeal of the
23 original order or certainly the clarifying order; is
24 that correct.

25 **MR. FLOYD:** That is part of it, yes.

000468

1 **CHAIRMAN CLARK:** All right. My question to
2 you is would the court have entertained that order
3 because it wasn't adverse and they were not harmed?

4 **MR. FLOYD:** Certainly I think that there's
5 an expectation whenever it is brought up that the
6 court will address it. As it did in this particular
7 case.

8 **CHAIRMAN CLARK:** No, let me be real
9 specific. It seems to me if they had tried to appeal
10 the first order that said -- that directed them to
11 negotiate, and then if they failed to negotiate we
12 would set lines, that the court would not have heard
13 them on that issue because it was either not ripe or
14 they were not harmed because actually the territory
15 was awarded to them. They were not adversely affected
16 by that order. And that's the only basis on which you
17 can appeal an order.

18 **MR. FLOYD:** But there were two parts of the
19 order and the part we're talking about here -- in
20 fact, our proceedings were ongoing pursuant to that
21 second part of the order which was as to those areas
22 around the prison facility.

23 **CHAIRMAN CLARK:** I realize we took it up in
24 the hearing. What would they have appealed to the
25 court? How would they have framed the issue?

1 **MR. FLOYD:** I would say this and then I'll
2 ask John to clarify on it. But it would be that the
3 Public Service Commission does not have jurisdiction
4 to define where the disputed areas are. And number
5 two, that they do not have the authority or
6 jurisdiction to set a boundary line where the two do
7 not agree. Both of those were set out specifically in
8 the order.

9 **CHAIRMAN CLARK:** I guess I think the court
10 would have responded, "Well, they haven't and,
11 therefore, it's not ripe for us to take up.

12 **MR. FLOYD:** Possibly, but that is something
13 that Gulf Power certainly ran the risk of in this case
14 if they had any questions about it. I think that it
15 should have been raised if they had some questions
16 about it, rather than raising it here now.

17 **CHAIRMAN CLARK:** Mr. Haswell.

18 **MR. HASWELL:** Madam Chairman, I'd agree with
19 what Mr. Floyd just said. But it seems to me issues
20 of jurisdiction can be raised at any time whether or
21 not the Commission has actually entered a final order.

22 **CHAIRMAN CLARK:** Well, I guess, Mr. Haswell,
23 I think they are raising the issue of whether we could
24 have sent -- pursuant to declaring dispute on our own
25 drawn lines. We didn't do that. We gave you all the

1 opportunity to resolve it and we said we would. It
2 seems to me that at that point an argument that it was
3 not ripe for appeal is an adequate defense for your
4 argument that they should have appealed it.

5 **MR. HASWELL:** I would agree with the first
6 part of your statement. That if all that order had
7 said was, "We order the parties to negotiate and to
8 come up with an agreement, period," that would be
9 exactly correct. But the order went beyond that and
10 said, "And if you don't, we're going to draw the
11 lines." It seems to me that is the part that they
12 should have objected to at that time and said, "I'm
13 sorry you do not have the jurisdiction to do that."

14 **CHAIRMAN CLARK:** Okay.

15 **MS. JOHNSON:** Chairman Clark, if I might, I
16 just want to clarify that Staff agrees that our
17 reading of the Supreme Court's decision does not set a
18 \$15,000 threshold and pursuant to Rule 25-6.0439, it
19 defines territorial dispute, and it defines it to mean
20 a disagreement as to which utility has the right and
21 obligation to serve a particular geographical area.

22 **MR. FLOYD:** Chairman Clark, if I may add one
23 item. I did not address that motion to dismiss
24 because I know that it's not before you at this time.
25 But, certainly, we disagree. The \$15,000 was in the

1 context of the facts and circumstances of this
2 particular case.

3 But we do not agree that it disenfranchised
4 the Public Service Commission from considering and
5 resolving territorial disputes.

6 **COMMISSIONER CLARK:** Okay. Mr. Stone, do
7 you want to indicate to me why the list that is your
8 preliminary issue should be included in the Prehearing
9 Order?

10 **MR. STONE:** Yes, Commissioner. Basically
11 your statement regarding the ripeness of the
12 Commission's previous order with regard to its
13 determination of drawing lines on the ground is why we
14 do not appeal it. Quite frankly, had we been
15 successful in reaching an agreement -- which we tried
16 to do and we brought an agreement back to you -- that
17 issue of what the Commission might have done had we
18 failed to reach an agreement would have been moot.
19 And in the interest of judicial and administrative
20 economy, that's the reason for having those
21 determinations of whether or not an appeal is ripe.
22 We understood that. It was not a question of whether
23 we thought it was a question. We thought it was very
24 clear. And for that reason the only issue that could
25 be appealed, the only final aspect of the Commission's

1 previous orders was the award of the prison to Gulf
2 Power Company. That is what was appealed and there
3 was a cross appeal with regard to some monetary
4 exchanges directed in that order which was also final.
5 But with regard to what future action the Commission
6 might take in order to resolve some determination as
7 to disputed areas which were not defined in that area,
8 other than in a descriptive sense, certainly was not a
9 final determination. And, in fact, we had offered
10 testimony with regard to the wisdom of drawing lines
11 on the ground and that testimony was stricken as not
12 being germane to the issues before the Commission at
13 that time. We simply want our opportunity to be heard
14 in that regard, and that's why we urge that all of
15 these additional issues, the seven that are on the
16 bottom of Page 1 of our May 14th memo and all of
17 Page 2 should be included.

18 **CHAIRMAN CLARK:** Well, I had Page 2, but I
19 can't find it now.

20 **MR. STONE:** I'll be happy to provide an
21 extra copy to you.

22 **CHAIRMAN CLARK:** Here, I've got it. Thanks.
23 Well, I'll tell you what is concerning me
24 about your issues, your extra issues. It seems to me
25 that those are arguments which are appropriate to take

1 up in a generic proceeding. You are, in fact, taking
2 issue with our rules and the statute on resolving
3 territorial disputes. And if those issues are allowed
4 in, then we would have to open up the docket to any
5 party or any utility, I suppose, or co-op or municipal
6 who may have a different view of how territorial
7 disputes could be otherwise resolved.

8 **MR. STONE:** I don't believe our raising
9 those issues goes quite that far. We are dealing with
10 the facts and circumstances before the Commission with
11 regard to the areas between Gulf Coast Electric
12 Cooperative and Gulf Power Company. But I would like
13 to point out that it has been characterized that we
14 have said the Commission does not have the authority
15 to determine that there is a dispute on its own
16 motion, and that is not what we're saying at all.
17 We're simply saying that if you make that
18 determination, the remedies you can use to resolve
19 that dispute must fall within the law. And we believe
20 that the law is clear, that your jurisdiction in the
21 absence of an agreement between the party is to
22 prevent the further uneconomic duplication of
23 facilities.

24 **CHAIRMAN CLARK:** We can't do that through
25 drawing lines.

1 **MR. STONE:** I don't think you necessarily
2 have to do it by drawing lines. And I think that
3 given the direction we've gotten from the Supreme
4 Court, the difficulty you have in drawing lines means
5 that's not a wise administrative course to follow.
6 And we want the opportunity to present testimony to
7 you to demonstrate that fact.

8 **CHAIRMAN CLARK:** Anything further from --
9 Mr. Cresse?

10 **MR. CRESSE:** Let me share a little history
11 with you which I think you already know, but one of
12 the -- the basis for the Commission's decision in
13 resolving a territorial dispute has historically been
14 least cost on the part of the utility to extend
15 transmission and/or distribution lines.

16 On at least two occasions in the last few
17 years, there's been legislation introduced that would
18 draw territorial boundaries equidistant under the
19 theory that if you go equal distance between two lines
20 that that would then let people serve. And I recall
21 the Commission opposing that in the legislative arena
22 because you can draw a line equidistant today and in a
23 year from now it may not be equidistant and then
24 you'll wind up spending uneconomic extension of lines
25 because you do boundary lines equidistant between the

1 existing lines.

2 I don't know if the Commission wants to
3 consider going beyond the transmission and
4 distribution lines because the issue has never been
5 raised. But one of the issues that we've put down
6 here is should you go beyond that? Should you go back
7 to generation? If you're going to do least cost
8 planning, maybe you ought to take a look at something
9 other than just distribution lines and transmission
10 lines.

11 **CHAIRMAN CLARK:** Let will me ask you this:
12 Isn't that the position you can take in response to
13 how should the Commission establish territorial
14 boundary? You can say in this case the Commission
15 should look at this, this and this.

16 **MR. CRESSE:** Yes, ma'am. And that's what
17 we're trying to raise here, because the issue was not
18 brought out how this should be done. The issue as to
19 whether or not you could impose something other than
20 lines on the ground that would be more cost effective
21 was not presented. It was not permitted to be
22 presented. And I think what we're asking is the
23 opportunity to present that. Is there an alternative
24 other than drawing lines on the ground that would be
25 more cost effective and beneficial to the consumers in

1 this state? And I don't recall an issue that
2 significant for an alternative has ever been denied.
3 You know, you won't even hear it. I'm troubled by the
4 fact that folks don't even want you to hear that
5 opportunity. We think there is an opportunity to do
6 it more cost-effectively. We'd like for you to hear
7 it.

8 **CHAIRMAN CLARK:** Mr. Floyd or Mr. Haswell, I
9 guess what I hear Mr. Cresse, on behalf of Gulf Power,
10 suggesting is that another issue be added that is
11 there an alternative to drawing lines on the ground?

12 **MR. FLOYD:** Chairman Clark, I think that
13 that certainly is one that was addressed and gone over
14 in the hearing. We really came down to -- even in the
15 discussions and the negotiations back and forth,
16 pursuant to the order, there were a number of
17 different ideas. It came down to that in the
18 clarification of the order that certainly there were
19 innovative ideas that might be permissible in the
20 areas that were outside of those commingled directly
21 in conflict or close proximity, but in those that were
22 in dispute.

23 That the -- it was determined that the
24 territorial boundary line was necessary to prevent
25 these people, these two utilities from coming back and

1 coming back and coming back again.

2 And I think that that's -- the real solution
3 here is one that's been worked on by the Staff a long
4 time towards reaching a conclusion of this matter and,
5 certainly, it's one that was pointed out by the
6 Supreme Court that it desired. And what I hear Gulf
7 Power saying is in multiple different ways, "Let's
8 wait until the conflict occurs or rises to attempt to
9 resolve it." Unfortunately, that has not worked, and
10 the boundary line is what was determined in the order
11 and that is what, more than coincidentally, is
12 necessary to eliminate the future conflict in those
13 commingled, close proximity areas. Now, the other
14 areas, the order has said we can try some of those
15 innovative ideas and certainly those are the ones that
16 we can look at.

17 **MR. STONE:** Chairman Clark, if I may respond
18 briefly. First of all, I'm always troubled when
19 Mr. Floyd tries to tell me what I've said. Saying
20 it's so doesn't mean that it happened. We never did
21 resolve this issue in the previous hearing. In fact,
22 our attempts to present testimony to that issue were
23 denied because they were not ripe. We had a witness
24 who had filed testimony that was addressing this point
25 squarely, and he was prevented from testifying at the

1 hearing. We knew we would have another day. We were
2 told we would have another day. We're simply seeking
3 that other day.

4 With regard to what Gulf is proposing, I
5 submit to you that if our proposed rewording of
6 Issue 6 is adopted, that that implies that there may
7 be alternatives and we could, in fact, argue our
8 positions on the additional issues under that
9 umbrella.

10 **CHAIRMAN CLARK:** Let me ask you this: Why
11 can't it be left the way the Staff has it and when it
12 says "how should," you can say "it shouldn't."

13 **MR. STONE:** Because what we've heard from
14 Mr. Floyd and his client, what we've heard from the
15 Staff thus far is that determination has already been
16 made. We will not hear any alternatives. The reason
17 we're before you today is because no one is willing to
18 hear us with regard to alternatives and we need the
19 direction from the Commission to say, "Yes, we want to
20 consider alternatives. We want to hear what you have
21 to say in order to overcome that objection that has
22 been expressed in our previous efforts to flesh out
23 the issues."

24 **MR. FLOYD:** Chairman Clark, I think that I
25 hear, too, though, that if they wanted to raise the

1 issue and their main challenge is to the Commission's
2 having the jurisdiction to assert a boundary line
3 where the parties do not agree, then as Mr. Haswell
4 pointed out, that jurisdictional issue is reserved,
5 and they can raise it if they like at any particular
6 context in the proceedings. But I think that the
7 issues are pretty simple the way they are, and they
8 have an avenue of being able to attack that in the
9 proceedings if they like any time.

10 **MS. JOHNSON:** Chairman Clark, if I might.
11 Just for the record, in reading the transcripts of the
12 hearing, it's my interpretation that there was some
13 testimony. There was some testimony and evidence in
14 the record that there were areas where there were
15 commingled facilities other than merely the prison
16 site. The testimony that Mr. Stone has referred to,
17 I've read portions of it and in my opinion it didn't
18 address the issue of whether or not a line should be
19 drawn. It addressed primarily the question of the
20 purpose and intent of rural electric cooperatives and
21 how perhaps their purpose is no longer needed. But it
22 didn't address the question specifically as to whether
23 or not lines should be drawn.

24 I also read the post-hearing briefs and both
25 of the parties did address the issue of whether or not

1 the Commission should consider areas other than the
2 prison site. However, the issue of whether or not the
3 Commission had authority to draw lines was not
4 addressed. That's my reading of the transcripts in
5 the post-hearing briefs.

6 **MR. HOLLAND:** Madam Chairman, could I say --

7 **CHAIRMAN CLARK:** Yes, Mr. Holland.

8 **MR. HOLLAND:** All that we are asking for
9 here -- and I would reiterate what Mr. Cresse just
10 said, to my knowledge the Commission has never
11 precluded a party from presenting alternatives that it
12 believes very strongly are in the best interest of the
13 ratepayers that this Commission has jurisdiction over.
14 And all that we're asking for is the opportunity to
15 present some of those alternatives to the Commission,
16 have the Commission consider those alternatives, and
17 make a decision with respect thereto.

18 I would come back to something that
19 Mr. Stone just said. It seems to me, and I think
20 there is a critical distinction to be made between the
21 word "how" and the word "should." And that if the
22 Commission would reword that Issue 6 to say, "Should
23 the Commission" and you have down there in the add-on
24 to the last part of Issue 6, "If so, how and where,"
25 so that that issue is preserved. But that would give

1 us the opportunity to present those alternatives and
2 that's all that we're asking for here.

3 **MS. BASS:** Chairman Clark.

4 **CHAIRMAN CLARK:** Yes, Ms. Bass.

5 **MS. BASS:** I don't have any problem in
6 rewording Issue No. 6, but just -- I do have some
7 concerns with it. My biggest concern is that it's my
8 reading of the order -- and I'm not an attorney, so
9 this is just my reading of it -- the order and the
10 clarifying order, I thought, very specifically
11 directed Staff and the parties to establish a
12 territorial boundary between the two utilities where
13 the electric facilities are commingled and in close
14 proximity. That was what our intent was when we wrote
15 this issue.

16 It's my belief that that's still what our
17 direction is supposed to be. I don't have any
18 problem, and I think the Commission should, if it
19 deems appropriate, consider alternatives, creative
20 alternatives, if you will, for areas where future
21 uneconomic duplication could occur.

22 And I think that that's -- I think there's
23 two parts to the issue. One is the drawing of a
24 territorial boundary where there is commingled and
25 there is duplication. And then how do we fix those

1 areas where the potential exists but they are not
2 currently commingled and there is not current
3 duplication? So I see two parts to it.

4 **CHAIRMAN CLARK:** Mr. Stone.

5 **MR. STONE:** I understand Ms. Bass's concern,
6 but that's exactly what we have been talking about is
7 that Staff believes that they have no choice but to
8 draw lines. We believe that there is a choice. We
9 believe, in fact, it's the prudent choice and we want
10 the opportunity to demonstrate that. It will not
11 preclude you if you disagree with us in drawing lines.
12 But we don't believe that you should preclude us from
13 arguing our position and preordain that you're going
14 to draw lines when we haven't had a chance to be heard
15 on the issue.

16 **CHAIRMAN CLARK:** Well, you know, that was
17 what we originally did in the whole case. We said we
18 declared the dispute to include more than just the
19 prison, so you all were on notice that the possibility
20 was at the end of that proceeding we were going to
21 draw lines.

22 **MR. STONE:** We were under the impression
23 that the end result may be to resolve the dispute.
24 Whether the dispute is resolved by drawing lines on
25 the ground was not something that was litigated in the

1 previous proceeding. All I'm suggesting is that to
2 assume that the only possible solution is to draw
3 lines on the ground destines us to in fact draw lines
4 on the ground without ever exploring those other
5 possibilities.

6 **CHAIRMAN CLARK:** Well, let me just point
7 this out to you, Mr. Stone. The territorial agreement
8 is described as an agreement where you identify the
9 geographic areas to be served by an electric utility,
10 and then dealing with disputes, it also refers to
11 defining the geographic areas.

12 The last time I checked, you define
13 geographic areas by drawing lines.

14 **MR. STONE:** And we just simply argue that
15 there are better, more prudent ways to resolve
16 disputes than drawing lines. That is not the only
17 thing to consider.

18 **CHAIRMAN CLARK:** All right. Anything
19 further? What is it Staff that you want me to do
20 today? Let me just throw this out.

21 It seems to me you have a motion to dismiss
22 that is pending, and it will be ruled on at the
23 appropriate time. And it seems to me whether or not
24 we can set territorial boundaries by drawing lines
25 after the Supreme Court decision will be tested in the

1 motion to dismiss and that's the appropriate area to
2 do it. It is my view that the order was clear, at
3 least the clarification that we did intend to draw
4 lines on the ground and, therefore, it's my ruling at
5 this point that the Prehearing Order will indicate the
6 Issues 1 through 7 as described by Staff. I do
7 indicate that I think the changes suggested by Gulf
8 Power with respect to Issues 2, 3, 4 and 5 should
9 be -- those changes should be made and, also, we
10 should refer to uneconomic duplication. And it would
11 be my view that if the utility wants to pursue what I
12 view as opening up of this docket to consider more
13 issues, then it has to be decided by the full panel in
14 this case. And, therefore, I think it's appropriate
15 to limit the Prehearing Order, and you can take it up
16 with the full panel by whatever the appropriate motion
17 is.

18 **MR. HASWELL:** Request the Commission's
19 indulgence and, hopefully, Gulf Power's concurrence.
20 I've spent the last week up in the mountains of
21 Virginia with a troop of boy scouts and got in at 2:00
22 a.m. this morning and just changed cars and drove over
23 here. Would anybody have any objection to giving us
24 an extension of time to answer Gulf Power's motion
25 until August 7th? That would give me a reasonable

1 amount of time to look at it.

2 **MR. STONE:** My client says it's okay.

3 **CHAIRMAN CLARK:** Okay.

4 **MR. HASWELL:** Thank you.

5 **CHAIRMAN CLARK:** All right. We'll do it
6 then. I just think if you want to -- I believe it is
7 opening it up. And if that is the decision to be
8 made, it needs to be made by the full panel.

9 **MR. HASWELL:** Madam Chairman, do we need to
10 address any issues about the discovery that we've done
11 on a voluntary basis on any deadlines?

12 **CHAIRMAN CLARK:** Is there anything else
13 that's ripe for determination?

14 **MS. BASS:** Not at this time.

15 **MS. JOHNSON:** No. Nothing we're aware of.

16 **CHAIRMAN CLARK:** Okay. Thank you very much.
17 The pre-prehearing is adjourned.

18 (Thereupon, the pre-prehearing conference
19 concluded at 2:30 p.m.)

20 - - - - -

21

22

23

24

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

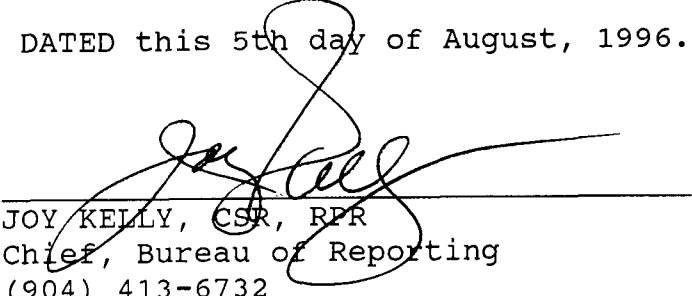
CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting Official Commission Reporter,

5 DO HEREBY CERTIFY that the Pre-Prehearing
6 Conference in Docket No. 930885-EU was heard by the
7 Florida Public Service Commission at the time and
8 place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 38 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 5th day of August, 1996.

15
16
17
18
19
20
21
22
23
24
25

JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
(904) 413-6732