

LAW OFFICES  
CHANDLER, LANG & HASWELL, P.A.  
POST OFFICE BOX 23879  
GAINESVILLE, FLORIDA 32602-3879

ORIGINAL

TELEPHONE 352/376-2226  
TELECOPIER 352/372-8858  
211 N E FIRST STREET  
GAINESVILLE, FL 32601-5367

JAMES F LANG  
JOHN H HASWELL  
C WHARTON COLE

October 10, 2001

WILLIAM H CHANDLER  
1920-1992

Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
**VIA HAND DELIVERY**

RECEIVED FPSC  
01 OCT 10 PM 2:49  
COMMISSION  
CLERK

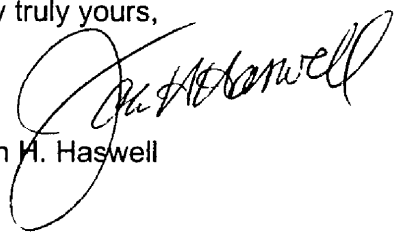
RE: In Re: Territorial Dispute Between West Florida Electric Cooperative  
Association, Inc. and Gulf Power Company in Washington County, Florida  
Docket No.: 010441-EU

Dear Ms. Bayo:

I am enclosing herewith an original and fifteen (15) copies of the Post-Hearing Brief, together with the original and fifteen (15) copies of the Post-Hearing Statement of Issues and Positions, to be filed on behalf of West Florida Electric Cooperative Association, Inc., in connection with the above-referenced matter.

I am also enclosing a copy of this letter as an acknowledgement copy and would appreciate it if you would file stamp it and return it to me in the enclosed self-addressed/stamped envelope as an acknowledgement of the date the above document was filed. Please call me if you have any questions regarding this matter.

Very truly yours,

  
John H. Haswell

JHH/daj  
Enclosures

1/PP  cc: All parties of record  
CAF   
CMP   
COM  3  
CTR   
ECR   
LEG   
OPC   
PAI   
RGO   
SEC   
SER   
OTH

RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12911 OCT 10 2001

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Territorial Dispute Between  
West Florida Electric Cooperative  
Association, Inc. and Gulf Power  
Company in Washington County,  
Florida.

---

Docket No.: 010441-EU

Date Filed: October 10, 2001

**POST-HEARING BRIEF OF  
WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.**

In compliance with Order Number PSC-01-1825-PHO-EU issued on September 11, 2001, West Florida Electric Cooperative Association, Inc. ("West Florida") files herewith its Post-Hearing Brief. References to the Transcript will be shown as ("T-10/7"), for example, meaning Page 10 of the Transcript at Line 7. When the identity of a witness is appropriate, his name will appear with the cite, e.g.: ("Rimes, T-23/9"). This brief is divided into four parts, Part I is an introduction and summary of West Florida's position; Part II addresses the remaining issues, Part III addresses Issue 11, and Part Four states proposed findings and conclusions of law.

**PART I – INTRODUCTION  
SUMMARY OF ARGUMENT**

This case is about an effort by Gulf Power to extend electric service into the historic service area of West Florida. What is remarkable and what is a challenge to this Commission's rules, statutory guidelines, precedent, and to territorial integrity is that the very site Gulf Power claims as its own is being served right now by West Florida. The exhibits of Mr. Rimes and Mr. Clark are telling. Exhibit 2 (WR-1 and 2) show the extent of West Florida's service area, which includes Hinson Crossroads. Mr. Clark's Exhibit 4 (GE-4, 5, 6, and 7), show that this is a 35-acre site owned by Florida Gas

DOCUMENT NUMBER-DATE

12911 OCT 10 01

Transmission since the early 1960s. And, as Mr. Clark's photographs show, it is occupied by a gas compression facility within a fenced area owned and operated by FGT. West Florida has been serving FGT since the early '60s at this site. (T-34/3). GC-5 of Exhibit 4 illustrates the relationship of Station 13 to the additional equipment FGT is purchasing, installing, and owning as additional compression capacity and calling it Station 13A. Gulf Power wants to define the disputed area as the footprint of the equipment, two large electric motors that FGT will own and operate. Mr. Spangenberg claims that electric utilities serve customers, not geographic areas. But this Commission by its own rules has defined territory as geographic areas (Rule 25-6.0439, FAC). Chapter 366 refers to territory, not customers. And this Commission, in the dispute between Gulf Power and Gulf Coast Electric in Docket Number 93-0885-EU, determined as a matter of law that Chapter 366 speaks to territory, not customers (Order Number PSC-98-0174-FOF-EU, Page 21). Gulf Power's witnesses have confirmed that by adding additional equipment they can serve additional load along the six-mile extension into West Florida's service area. Hence, West Florida is rightfully asserting that the disputed area is a geographic area within a four-mile radius of Station 13. Gulf Power claims that FGT is not the customer and that Enron Compression Services is the customer. Let's look at the facts. First, FGT tells FERC that it will own and operate the additional compression capacity (Exhibit 11, RD-8). Mr. Hilgert of Enron himself called it incremental pressure over and above what is already available. This is not a new site. FGT will own the motors (Exhibit 14, Page 21, Lines 17 - 20). FGT ordered the motors (Exhibit 14, Page 21, Lines 17 - 20). FGT determined the size and specification of the motors (Exhibit 14, Page 27, Lines 17 - 25 and Page 28, Lines 1

- 3). FGT will operate the motors (Exhibit 14, Page 21, Lines 21 – 25), and FGT will maintain the motors (Exhibit 14, Page 27, Lines 6 – 11). Florida Gas Transmission claims it is leasing the motors to ECS, but ECS contracts back the operation and maintenance to Florida Gas Transmission (Exhibit 14, Page 27, Lines 12 – 16). FGT owns or will own the building and structures around the motors (Exhibit 14, Page 21, Lines 13 – 16). But whether FGT or ECS is the real customer is not determinative because the entire site itself is served right now by West Florida. It is West Florida's historic service area. Gulf Power first argued that it was the only utility with transmission assets capable of serving the site, but now concedes that West Florida with its generation and transmission partner, Alabama Electric Cooperative, has access to the 230 kV line (Exhibit 7, Page 20, Lines 2 – 13). Gulf Power suggested that West Florida was incapable of providing the service and can only do it if Alabama Electric Cooperative joins in. West Florida is a co-owner of AEC (T-038/18 – 25; T-52/18 – 25 and T-53/1 – 17; T-177/17 – 20), and together with West Florida AEC will provide the generation, transmission, and distribution service just as Gulf Power does under one roof (T-136/10 – 181); T-135/18 – 24; T-131/1 – 4; T-81/16 – 25 and T-82/11 – 13). Between the two, they have all of the expertise, service, and capability to handle this load and have done so with loads up to 100 megawatts, nearly twice the largest load of Gulf Power (T-153/11 – 17; Exhibit 8, Page 29, Lines 8 – 19). This is not a case of looking only at a section of Chapter 366 on the maintenance of a statewide grid and avoiding uneconomic duplication. This case is under the dispute resolution provisions of Chapter 366.04, and the criteria used by the Commission to resolve disputes. Uneconomic duplication is but one aspect, not the controlling or determinative one and

neither is customer choice (Order Number 18886, Docket Number 87-0235-EI, issued February 18, 1988). West Florida's witnesses have agreed that adding only the facilities necessary to serve the two motors will not result in uneconomic duplication. But service by Gulf Power can lead to further uneconomic duplication if Gulf Power adds equipment, which it says it will do if a new load comes along that Gulf Power wants to serve. If on the other hand West Florida provides the service, there is an opportunity to make use of the additional transformer to improve West Florida's reliability and save some costs (T-155/15 – 25 and T-156/1 – 4). This is not a case where everything is equal. Indeed, there is an opportunity for a greater benefit to West Florida by utilizing additional equipment, a benefit available to West Florida, but not to Gulf Power, because Gulf Power has no customers in this area. This is not an unusual or unique load that only Gulf Power can serve. West Florida's copartner AEC serves a load almost twice the size of Gulf Power's largest load. This is simply a case where a bunch of deals have been made to attempt to convince the Commission that ECS is a new customer on a site never before served. This simply is not the case. There is also a big hole in Gulf Power's case. They have acknowledged that the only service they will provide is electric service to the terminals of two electric motors and nothing else. But these motors will be in a building, and there will be coolers installed, and obviously there will be lighting and control switches and equipment that cannot operate at the voltage supplied by Gulf. The only conclusion that can be drawn, especially after Mr. Hilgert says he doesn't know who will provide the additional electric service (Exhibit 14, Page 22, Line 4), and after Mr. Howell says in his testimony that Gulf Power's service is from the transformer directly to the terminals of those two electric motors (Exhibit 7, Page 10,

Lines 12 – 14 and T-106/21 – 23), and after Enron told West Florida that its metered load at Station 13 would increase (T-62/14 – 16), is that Florida Gas Transmission planned all along on extending its internal electric system into the new building to operate this ancillary equipment. Enron operates on paper as an energy converter. And it arranges and markets and packages natural gas compression services. This case is nothing more than FGT trying to arrange for electric service through a third party and bypass its existing power supplier. Enron, a leader in promoting retail wheeling, Florida Gas Transmission, and Gulf Power want to do what the legislature has refused to authorize. They want the Commission to authorize customer choice and retail wheeling now in this case. Not only would this be a departure from Commission policy and rules, it would have no statutory authorization and would authorize Gulf Power or any electric utility to reach into anyone else's service area and take customers away. FGT is obviously trying to find a way to get a fixed price for electricity. Gulf Power cannot guarantee a fixed rate or a capped rate. Neither can West Florida. So they brought in a paper corporation, one that is not regulated and it gets in between the customer and the customer's existing power supplier, promises FGT a fixed rate for power, and then makes a deal with Gulf Power, the terms of which it claims are secret. This device could be used anywhere in Florida to avoid existing law and policy. This should not be allowed to stand, otherwise utilities will be unable to properly plan their systems prudently and far enough into the future to meet anticipated load, when there is doubt as to whether they will ever get to serve the new load. When territory means nothing lenders will be reluctant to finance a utility that is unable to assure the lender of the integrity of its service area. What Gulf Power and ECS want to do is not the policy

of this State. Let's also be clear that while ECS claims it is selling horsepower to Florida Gas Transmission, it is electricity driving the train. It is power in and it is power out. Perhaps that is why neither ECS nor FGT intervened in this action and neither of them showed up on Gulf Power's witness list. They do not have an answer to West Florida's petition.

## **PART II – ISSUES**

The parties stipulated to Issues 4, 6, 7, and 9, and agreed to delete Issue Number 2, since the information developed for Issue 2 will stand to support Issue 9 and the other issues. Chief among the stipulated issues is Issue 9, which resolves conflicts in the testimony of the Gulf Power witnesses and in Gulf's Exhibit Number 6 (TSA-1). By stipulating to Issue 9, it is undisputed that West Florida and AEC have access to the same transmission facilities that Gulf Power had access to.

**Issue 1: Pursuant to Rule 25-6.0441(1), Florida Administrative Code, what is the service area that is the subject of this territorial dispute?**

Gulf Power defines the disputed area as the footprint of the electric motors to be installed by Florida Gas Transmission ("FGT") at its facility on the 35-acre parcel of land owned by FGT near Hinson Crossroads (T-110/20 – 21, see also Exhibit Number 8, Page 7, Line 9 – Deposition of Spangenberg), thereby ignoring the language of Chapter 366, Florida Statutes, which uses the term "territory", and most importantly, this Commission's own pronouncements, most notably in Order Number PSC-98-0174-FOF-UE, Page 21, where the Commission accepted as a conclusion of law the following statement:

"Chapter 366 speaks to "Territory", not to customers as the Florida

Supreme Court has ruled, a customer has no organic, economic or political right to choose an electric supplier merely because he deems it to be to his advantage, (Story v. Mayo, 217 So.2d 304 (Fla 1968), Lee County v. Marks, 501 So. 2d 585 (Fla 1987) ).”

Looking at the territory where the electric motors will be installed is instructive in arriving at a reasonable determination that the disputed area is indeed an area within a four-mile radius of the FGT facility. Mr. Rimes Exhibit 2 (WR-1 and WR-2) shows the overall service area of West Florida and the area around the specific site at Hinson Crossroads. There are no service facilities of Gulf Power’s near the site, which is currently served by West Florida, and West Florida has additional service facilities surrounding the area, running all the way down and past Gulf Power’s 230 kV transmission facility. FGT has owned the 35-acre site where the electric motors will be installed since the 1960’s, and FGT calls this Station 13 (T-59/3 – 4, 23 – 25). WFEA has provided service to FGT on that site since 1962 (T-31/18 – 19), has served the general area since 1946 (T-62/2) and has an easement to serve the site (T-31/1 – 3), Exhibit 2 (WR-3). The nearest single-phase service of Gulf Power is four miles away, and the nearest three-phase service of Gulf Power is nine miles away. Even if Gulf Power argued that FGT’s 35-acre site is the disputed area, resort to the Commission’s prior Order PSC-98-0178-FOF-EU issued January 28, 1998, resolving a dispute between Clay Electric Cooperative, Inc. and Florida Power & Light Company (Docket Number 97-0512-EU), is also instructive. Clay Electric claimed the disputed area in that case was the physical boundary line of the land purchased by the customer, while FPL argued that because there was potential for growth of commercial and industrial customers within a larger area, the Commission should not define the disputed area at



just the customer's property boundaries. The Commission agreed with FPL (Order Number 98-0178 at Page 4). By adopting a larger view of the disputed area as one that could include future customers, the Commission also determined that FPL (which had facilities in the vicinity) had historically served the disputed area (Id., Page 6). Hence, not only has the Commission refused to consider a customer's equipment as the boundary of a disputed area, it has also refused to be restricted to the property boundary as well, and considers historic service to be factor in deciding territorial disputes. See also Order Number 12324, issued August 4, 1983 in Docket Number 83-0271-EU involving a dispute between Suwannee Valley Electric Cooperative, Inc. and Florida Power Corporation in Lafayette County (the Mayo Prison), where the Commission determined that the disputed area was not just the prison site, but an area of 36 square miles around it, where Suwannee Valley served 151 customers. Florida Power Corporation ("FPC") argued that it historically served the area due to the presence of its transmission line in the immediate vicinity. The Commission did not agree and the determined that FPC's action was an intrusion into Suwannee Valley's service area, and further determined that Suwannee Valley historically served the specific site itself. Hence, even if Gulf Power's transmission line ran through the disputed area in this case, the presence of those lines are irrelevant, and give Gulf Power no advantage over West Florida. In this case, West Florida has served the disputed area for 55 years, and has nearly 400 customers in the area (T-165/9; T-59/23 – 25; T-60/4).

In another case involving Suwannee Valley and FPC (the Jasper Prison), Docket Number 87-0096-EU, the roles were reversed. FPC had provided service to the

disputed area since 1959 and still provided service to Mr. Deas, the previous owner of the disputed area where the Department of Corrections was planning to build a correctional institution (the DOC had purchased a portion of Mr. Deas property for the prison site). Suwannee Valley had a single-phase line traversing the property for over 30 years. The Commission awarded service to FPC, and noted two factors, the first being that FPC had been serving the area for many years, including Mr. Deas the prior owner, while Suwannee Valley served no one (Order Number 18425, issued November 16, 1987).

Closer to home is the 1988 decision by this Commission in Docket Number 87-0235-EI, a dispute between West Florida and Gulf Power over service to a new high school (Ponce deLeon) in Holmes County. In that case, Gulf Power was already serving the school board's elementary school, and had done so since 1979 with temporary construction service and later permanent service without objection from West Florida. The new high school was to be built on property adjacent to the elementary school. Although the school board requested service from West Florida, and that the Commission found that the cost of the two utilities to provide service to the site where "not substantially different in cost", nonetheless, one of the primary reasons service was awarded to Gulf Power was because Gulf Power had provided permanent electric service to the school complex property since 1981 (Order Number 18886, issued February 18, 1988).

In Docket Number 83-0484-EU, a dispute between Gulf Coast Electric Cooperative and Gulf Power over service to the Leisure Lakes area in Washington County, the Commission determined that it should not confine itself to just the

immediate site of the dispute, but also the surrounding area (Order Number 13668, issued September 10, 1984), concluding that Gulf Power had very little distribution in the surrounding area, that Gulf Coast had historically served the surrounding area, and that Gulf Power's "invasion into Gulf Coast's service area is unjustified" (Id., at Page 3). The Commission's award of service to Gulf Coast was upheld by the Florida Supreme Court in Gulf Power Company v. Public Service Com'n, 480 So.2d 97 (Fla 1985).

In Docket Number 85-0087-EU, another dispute between Gulf Power Company and Gulf Coast Electric, Gulf Power constructed 2,900 feet of distribution line to serve a cemetery and one residential customer on Gap Pond Road. The Commission found that Gulf Coast had historically served the area southeast of Gap Pond since 1951, and prior to the Gulf Power extension into the area in 1985, customers in the disputed area were exclusively served by Gulf Coast (Order Number 16106, issued May 13, 1986). The Commission's primary reason for awarding service to Gulf Coast was the cooperative's historical service to the area (Id., at Page 5).

In Docket Number 93-0885-EU, another dispute between Gulf Coast and Gulf Power involving the Washington County Correctional Institution site in south Washington County, Gulf Power alleged that the "disputed area" was just the site of the prison, while Gulf Coast claimed it was really all of south Washington County and portions of Bay County. Citing its decision in Docket 91-1141-EU (a dispute between Okefenoke and Jacksonville Electric Authority) the Commission determined that a much broader dispute existed, extending to all areas of south Washington County and Bay County where the facilities of the two utilities were in close proximity and where the potential for future conflict existed (Order Number PSC-95-0271-FOF-EU, issued March

1, 1995). Finally, Mr. Clark's Exhibit Number 4 (GC-5 and GC-6) show the site itself in photographs as well as the diagram of the facility with the expansion plan as proposed by FGT. To argue that the electric motors powering the compressors constitute the disputed area is, to conclude, patently ridiculous.

**Issue 3: What is the existing and planned load to be served in the disputed area?**

The existing West Florida load is approximately 3000 kW. The load is projected to grow approximately 2% per year, reaching the level 4500 in the next 18 to 20 years. The only prospect for additional load is the expansion to the FGT facility and the addition of two 15,000 horsepower electric motors.

This issue could have been stipulated to, but for Gulf Power's gratuitous statement and its position on this issue that: "No utility currently provides electric service to Station 13-A and there are no customers in that area", again claiming the disputed area to be the footprint of the motors. There really is no dispute over what is currently in the area (Perry, T-80/5 – 11) or that the new load will be the two 15,000 hp motors (Perry, T-82/10 – 13; Dunaway, T-47/6 – 10; Howell, T-99/5 – 6). Mr. Spangenberg's claim that because Mr. Perry did not include the new FGT/Enron load in his load forecast regarding this issue that West Florida did not plan on serving the new load is a specious argument (T-195/11 – 14). All Mr. Perry was doing was showing what the planned load was before the new load came along.

**Issue 5: Are the planned electrical facility additions and other utility services to be provided in the disputed area reasonably expected to decline in the reliability of service to existing and future utility customers?**

No, and if service is provided by West Florida, it can be reasonably expected to cause an increase in the reliability of service as well as benefits to West Florida's members due to West Florida's access to the second transformer for use by West Florida's members in the area.

This is clearly another factor in favor of West Florida, one hotly contested by Gulf Power, since its whole mission in this case is to make it appear that "all things are equal", when they are not. West Florida's position on this issue is quite simple. West Florida has nearly 400 customers in the disputed area. Mr. Perry testified that service provided by West Florida would benefit those customers by having access to the second transformer in the sub-station to be built to serve FGT/Enron (Perry, T-155/15 – 25; T-156/1 – 4). Indeed, Gulf Power sought to strike this testimony at the hearing to keep the Commission from considering a detriment to West Florida if it does not provide the service. But even Gulf Power's witness Howell agreed that the second transformer could be used to serve other customers, although he was very reluctant to do so. He tried very hard to dodge the question (Exhibit 7, Page 21, Line 18 through Page 24, Line 18). And, as Mr. Cicchetti said:

"The added load would be very beneficial to the customers of WFEC, the historical provider of service to the disputed area." (T-175/6 – 8).

**Issue 10: (Legal Issue) As a matter of law or policy, is it permissible for an existing customer of an electric utility to enter into a contract with a third-party to provide electric service to the existing customer through another electric utility?**

No. A customer already receiving adequate and reliable central station service from the utility ("Host Utility") serving the area where the customer's end use facilities are located may not bypass the Host Utility by contracting with a third party for such

service, where the third party will take service from a utility other than the Host Utility. Neither may the customer or the other utility claim that the third party is the real customer who may or may not have had prior service from the Host Utility, when the basic purpose of the third party's contract with the customer is the providing of energy, power, BTU's, or mechanical service to run the customer's facilities, when in the final analysis it is electricity – electric service – that is driving the whole project. No customer has the right in Florida to choose his or its electric power supplier as a matter of law.

This is one of several fundamental issues of this case and for the sake of argument, assumes that Enron Compression Services (“ECS”) is truly a third party, and not the alter ego of FGT. West Florida continues to assert that FGT, Enron North America, and Enron Compression Services are all interrelated and part of the same group of companies. (T-161/7 – 18). Nonetheless, is it permissible for a customer, such as FGT, who is already receiving adequate central station service from its current power supplier, to contract with a third party for “power”, in this case “horsepower”, to serve additional facilities the customer is adding to its site, through the use by the third party of another electric utility? If the answer is “yes”, then retail wheeling and customer choice must have arrived in Florida by some vehicle. Fortunately that vehicle has not arrived, and the legislature has turned down proposals to implement “restructuring”, retail wheeling, and customer choice. It is common knowledge that the Governor of this state is not interested at this time in pursuing restructuring either. Nowhere in Chapter 366 has the legislature authorized customer choice or retail wheeling. We cannot cite to a statutory provision because there is none. The law of the land to date remains Story v. Mayo, 217 So.2d 304 (Fla. 1968) and Lee County v. Marks, 501 So.2d 585 (Fla.

1987), a customer has no right to choose a power supplier. The third party in this case is Enron Compression Services ("ECS"), and as will be more fully developed in discussing Issue 11, Gulf Power claims that ECS, not FGT, is the customer (T-112/7 – 8) in the disputed area, and ECS claims it is providing "horsepower" to FGT by operating the electric motors and converting electricity to mechanical energy. Sounds clever doesn't it? But in the final analysis, the service Gulf Power claims ECS wants to provide to FGT is the same service West Florida would provide FGT, that is, electric service to drive electric motors to provide horsepower to FGT's compressors. Whether the service is provided through some contractual arrangement with ECS, or directly by West Florida, nothing else changes. It will be the same wires going to the same motors, which will operate the same compressors.

Gulf Power and ECS claim that ECS is providing "compression services", and "mechanical energy" to FGT, not electricity (Exhibit 6; Exhibit 14, Page 15, Lines 13 – 17), as if this was a "new" service, when in fact it is not any different or newer than electric service from West Florida. To adopt Gulf Power's argument one would have to also agree that ECS could contract with the Florida Public Service Commission in Leon County to provide "illumination services" to the light fixtures in the Gunter Building as well as BTU services for any heating units, and horsepower services to operate all devices using mechanical energy. The PSC could then lease the light fixtures, the heating coils, and all the electric motors in all of the mechanical devices owned by the Commission to ECS, and then ECS could claim that it is a new electric customer with the right to choose its own power supplier and perhaps contract with Gulf Power to provide this "new" electric service. As Mr. Spangenberg said in such a case, Gulf

Power would have an obligation to consider providing the service or face the consequences of the anti trust laws (Exhibit 8, Page 9, Line 22 to Page 10, Line 3). The bottom line is that the contractual devices developed by FGT, Enron, and Gulf Power do not change the nature and character of the service that is actually being provided, which is electric service.

### **PART III – CONCLUSION**

#### **Issue 11: Which utility should be awarded the service area in dispute?**

West Florida should be awarded the service area in dispute. Briefly, the service area is within West Florida's historic service area; the specific site is currently being served by West Florida; the service is an expansion of the existing customer's load; the claim that by using a third party arranger (ECS), FGT is not the customer, is just that – a claim, when in fact this is service to an existing customer of West Florida, and West Florida can provide service adequately and reliably at no more cost than Gulf Power.

#### **A. Who is the customer – is this a new facility?**

In addition to the specific issues argued previously and those stipulated to, are several additional matters that should be addressed under the overall issue on who should serve the disputed area. First among these matters is, "Whose customer is this anyway?". Mr. Anthony believes that Station 13-A is a new facility (T-89/22) because it has a different metering point, but if the current customer was expanding its load and not taking a different metering point, then he would consider it an expansion (Exhibit 9, Page 7, Line 24 to Page 8, Line 5). In fact, this *is* an expansion of FGT's facility as shown by FGT's own filing with the Federal Energy Regulatory Commission ("FERC"), portions of which are in Exhibit 11 (RD-8). The title of the document filed with the FERC



include the words "Phase V Expansion Project". On the second page of RD-8, FGT advises FERC that it is adding 132,615 horsepower of additional compression at nine existing and three new compressor stations. The seventh page of RD-8 shows a map (Figure 2.1 – 1) illustrating the FGT existing mainline, proposed pipeline, proposed new compressor stations and proposed compressor additions. The symbol identifying Station 13-A is defined as "proposed compressor addition". FGT, therefore, does not consider Station 13-A as a new compressor station. On Page 3 – 151 of RD-8, FGT says,

**"Compressor Station 13-A**

**FGT proposes to add 2 GE-TS motor driven compressors inside of a new compressor building at Compressor Station 13-A, increasing the compression at the facility by 24,000 HP to a total station compression of 36,700 HP."**

Note that FGT is telling FERC that it is increasing the compression at the facility to a "total station compression of 36,700 HP". Clearly, FGT is treating Station 13 and Station 13-A as the same facility and of course the plot plan for Station 13-A (the last page of Exhibit RD-8, and also Exhibit 4 (GC-5)) clearly shows that this all one integrated facility.

Gulf Power has attempted to suggest that there will be "two lateral lines" at Station 13-A. What they don't explain is "what is a lateral". Enron itself indicated they are only talking about one pipeline (Exhibit 14, Page 20, Lines 2 – 4) and, furthermore, Mr. Hilgert identified the purpose of this entire facility:

"A. My understanding is that it adds horsepower for the purposes of increasing the pressure of the gas to move it down the pipeline moving down Florida's - - the pipeline into Florida, FGT's pipeline into Florida.

Q. Ok, and what would be the purpose of Station 13-A with that same pipeline?

A. To add incremental pressure to the pipeline over and above what's already available." (Exhibit 14, Page 20, Lines 7 – 15).

Hence, Mr. Hilgert is agreeing with FGT's filing with FERC that the project at Station 13, which FGT identifies as Station 13-A is an expansion project, not a new facility. As previously noted, FGT ordered the motors and determined their size and specification. FGT will own the motors and will operate them and maintain them. FGT will own the building that they will be located in and ECS will have no employees on the premises (Exhibit 14, Page 23, Lines 3 – 7). In fact, Enron Compression Services Company has a total of eight employees who presumably work in Houston.

Let's look at what FGT was really planning on doing here. The Commission Staff at the hearing asked Mr. Howell several questions, getting to the issue of who was going to be providing electric service to the building, the needs of the building itself, the lighting, computers, air conditioning, and those types of things (T-106/11 – 16). Mr. Howell previously testified that Gulf Power was only providing electric service to two electric motors (T-99/5 – 6). Mr. Howell acknowledged that Gulf Power had not been requested to provide any other electric service. Mr. Hilgert, for Enron, when asked which utility was going to be providing electricity for lighting and other ancillary uses at Station 13-A said, "I don't know". (Exhibit 14, Page 22, Line 4). Based on his prior testimony, it is clear that Enron cannot provide that service, otherwise it obviously becomes an electric utility, unless of course it decided to refer to those other uses in creative ways. This explains why Enron told West Florida that West Florida would see an increase in the electric load at existing Station 13 (T-62/14 – 16), since logically the

expansion would be served by extending FGT's internal electric system into the new addition. Now we know why Gulf Power wants the disputed area to be just the equipment – the two motors. Gulf Power knows that West Florida will be providing the power to everything else around the motors.

This entire arrangement is a sham to try and avoid FGT's current power supplier. It is now quite transparent.

**B. Lack of interest?**

Mr. Anthony and Mr. Spangenberg both indicated that West Florida showed no interest in serving this load, apparently to justify Gulf Power's service to the expansion project. However, when asked at his deposition, Mr. Anthony admitted that he did not know whether there were any conversations between West Florida and Enron and didn't know whether or not there was a lack of energetic interest on the part of West Florida (Exhibit 14, Page 14 and 15, Page 25/Line 10). Mr. Spangenberg admitted that he had no knowledge of what West Florida knew or was aware of during the timeframe 1996 and 2000, nor did he have any direct personal knowledge that West Florida ever expressed a lack of interest in serving the project (Exhibit 8, Page 17, Line 8 through Page 18, Line 2). Indeed, the testimony of West Florida's witnesses William Rimes, Gary Clark and Russell Dunaway clearly show that West Florida has always been interested and is anxious to serve this load (T-42/11 – 19); Exhibit 3 (RD-2), (RD-3), (RD-4), (RD-5); T-53, Line 19 through T-57/25; T-34/12 - 13).

**C. Adequacy of West Florida's facilities.**

Although Gulf Power's witnesses questioned the capability of West Florida to serve the additional facilities to be installed at the Florida Gas Transmission facility, Mr. Spangenberg subsequently agreed:

"That they are competent to be able to extend those facilities and provide that service". (Exhibit 8, Page 18, Lines 8 and 9).

Mr. Howell also agreed at his deposition that West Florida and AEC can satisfy the requirements of the tariff under which transmission service would be available through the Southern Company (Exhibit 7, Page 20, Line 7 – 11). And in cleaning up the issue regarding existing facilities capable of serving the site, Mr. Anthony admitted that there are no Gulf Power facilities adjacent to or on the site (Exhibit 9, Page 20, Line 23 to Page 27, Line 8).

**D. Service capability/adequate and reliable service.**

Gulf Power's witnesses also, in their direct and rebuttal testimony suggested that West Florida lacked the experience and capability to adequately and reliably provide the service. However, at his deposition, Mr. Spangenberg agreed that West Florida with its wholesale power supplier, Alabama Electric Cooperative ("AEC") can provide adequate and reliable service and that AEC is competent to extend facilities and provide service (Exhibit 8, Page 26, Line 7 through Page 27, Line 6 ).

**E. Discriminatory rate setting practices/risky business.**

Gulf Power's witnesses also suggest that service by West Florida would be risky for the customer and would subject the customer to discriminatory rates. However, when asked if he could cite an example of discriminatory rates setting practices by West Florida, Mr. Spangenberg stated that his testimony was "hypothetical" and that he was not aware of any discriminatory rates setting practices of West Florida (Exhibit 8, Page

28, Line 3 through Page 29, Line 7). And, regarding the unacceptably high operational risk to the customer, Mr. Spangenberg agreed that with West Florida and its power supplier working to together (as they do anyway) those risks are mitigated (Exhibit 8, Page 29, Line 22 through Page 30, Line 12).

**F. Threatened to delay project?**

Gulf Power's witness, Anthony, included an exhibit to his direct testimony stating that West Florida had threatened to delay the project expansion at Station 13/13-A (Exhibit 6 (TSA-1) Page 8), Mr. Anthony later, at his deposition, acknowledged that he had not seen anything in writing nor heard anything verbally that West Florida threatened to delay the project. (Exhibit 9, Page 28, Line 22 through Page 29, Line 10).

**G. Jurisdictional differences.**

It his testimony, Mr. Spangenberg generally suggests that service should be awarded to Gulf Power because Gulf Power is fully regulated by the Public Service Commission, whereas West Florida is subject to a more limited oversight. In fact, pursuant to Chapter 366, the Commission has extensive jurisdiction over West Florida, including its rate structure and West Florida's rates, as well as the rates of all electric cooperatives are submitted to the Commission for review and approval. In Order Number 15210, issued on October 8, 1985 (Docket Number 84-0293-EU - a dispute between Peace River Electric Cooperative, Inc. and Florida Power & Light Co.) the Commission resolved Mr. Spangenberg's concerns:

"These conclusions follow from the fact that the Commission's jurisdiction over cooperatives is limited to the extent provided by Chapter 366. However, this fact is not relevant to a determination in this case. The reason for this is simple. The Commission's jurisdiction over cooperatives for certain stated purposes cannot be diminished because the Commission does not have full and complete jurisdiction over

cooperatives. Moreover, the Florida Supreme Court has stated that the Commission should not consider the extent of its jurisdiction over cooperatives in exercising its jurisdiction pursuant to Section 366.04(2)(e), Florida Statutes. Escambia River Electric Cooperative v. Florida Public Service Commission, 421 So.2d 1384 (Fla. 1982).

Mr. Spangenberg also suggested that service by West Florida somehow would amount to “social welfare” (T-118/4), however, neither he, nor any of the other Gulf Power witnesses explained exactly what that means. For whatever reason, Chapter 425 relating to electric cooperatives is contained in a title of Florida Statutes entitled “social welfare”, however, there is nothing in Chapter 425 itself that has anything to do with social welfare. West Florida, like all other electric cooperatives, is also governed by Chapter 607, the general corporation statute pursuant to Section 607.0301, except to the extent that Chapter 425 conflicts with it.

**I. Board of Directors.**

Gulf Power witness Spangenberg also suggests that because West Florida is a cooperative (and as such is owned by its members), the customer might be at risk due to the cooperative’s governance structure, suggesting that the membership might be able to discriminate against Enron (T-119, Lines 8 - 25) when in fact West Florida, as any other corporation, is bound by its contracts, just as Gulf Power is, and the members of the cooperative cannot overrule a binding agreement between the cooperative and anyone else (T-162, Line 18 through T-163, Line 12). Indeed, as a member of West Florida, ECS will have an equal vote on member issues, whereas it will have no vote in Gulf Power’s structure unless it purchased stock in The Southern Company (T-163/4 – 7).

**J. Gulf Power will serve other customers.**

Although Mr. Spangenberg testified that Gulf Power is only seeking to serve the ECS load at Station 13-A and has no intention of serving any present or future perspective customer (T-111/6 – 10) and although Mr. Howell also stated that “Gulf has no plans or intention to serve any customers other than ECS as a result of installing the electric transmission and distribution facilities to Station 13-A” (T-102/4 – 6), both of these witnesses admitted at their depositions that if new load came along, with the addition of additional facilities, Gulf Power would consider service to such customers (Howell Deposition – Exhibit 7, Page 15, Lines 16 through Page 16, Line 19; Spangenberg Deposition Exhibit 13, Page 9, Line 12 through Page 10, Line 7). So the stage will be set for potential future disputes if service is awarded to Gulf Power, and Gulf Power could then claim that once its transmission facilities are built in, it would then have the right to serve the customers along that corridor. Notwithstanding their direct and rebuttal testimony, Gulf Power will be ready to serve anyone else in the area. The potential for future duplication of West Florida’s surrounding electric facilities is therefore great.

K. Other jurisdictions.

While no case like this has become the courts in Florida (where a customer or its alter ego, attempts to switch power suppliers) a North Carolina court faced a similar situation where the customer was receiving service from the city of New Bern at its original building site. The customer then built a new building on adjacent property it had purchased, and requested service from Carteret-Craven EMC, which was provided. The customer then cut off service to the original building and demolished it. The city sued. The electric cooperative argued that the new building was a separate premises

and was separately metered. The court determined that the premises were contiguous, hence were one premises and that the separate metering claim was simply an artifact, and awarded service to the city. City of New Bern v. Carteret-Craven Electric Membership Corp., 548 S.E.2d 845(NC Ct. App. 2001).

This Commission should do the same. The “new” service is not new just because FGT wants it separately metered. It is not a new service or new customer just because FGT and its alter ego, ECS, sign an agreement for “mechanical services”. The premises are not just adjacent, they are the same premises. We don’t know what the real arrangement is between FGT, ECS and Gulf Power, because they all claim their contracts are confidential. Gulf Power claims that ECS chose it as the power supplier by signing a contract for service (T-91/19 – 21; T-124/18 – 20), but Gulf Power has failed to produce that contract in this case. And just as telling, neither Enron nor FGT offered testimony in this case to establish their purported claims, and neither did Gulf Power call either of them to provide testimony in support of Gulf Power’s claims.

This is a simple case. Gulf Power wishes to intrude into West Florida’s historic service area and provide electric service to the property and facilities of a customer of West Florida. It is as simple as that.

Mr. Rimes' testimony (T-23 to T-35) and his Exhibit 2 establish the initial basis for West Florida’s claim that this customer’s site is in West Florida’s service area. Mr. Rimes, Mr. Dunaway, and Mr. Clark all testified that West Florida is anxious and willing to provide the service, and contrary to assertions by Gulf Power was never disinterested. Mr. Clark’s Exhibit 4 shows the site in more detail, and his Exhibit GC-5 (part of Exhibit 4) makes it clear that this service is on the property of and part of the



facilities of FGT, West Florida's current customer. Mr. Perry and Mr. Parrish testified to the capability of West Florida to provide service adequately and reliably, with AEC as the wholesale power supplier, and through access to the 230 kV transmission facility. Mr. Moore also made it clear that AEC has access through The Southern Company's open access transmission tariff to those transmission facilities. Mr. Cicchetti's testimony (beginning at T-168) supports West Florida's position that the disputed area is an area within a four-mile radius of the site and is not the footprint of the two electric motors, pointing out that it is a geographic area that the Commission is concerned about when resolving a territorial dispute, not merely a customer's point of service (T-170/14; T-171/1 – 23). He also reminded us that the Commission looks at more criteria than just Gulf Power's single point on uneconomic duplication (T-174/1 – 25). Finally, he also dispelled the erroneous notions of Gulf Power that service by West Florida would somehow be risky to the customer because of West Florida's corporate structure, noting that the customer would actually have more forums available to remedy any dispute with West Florida than it would have with Gulf Power (T-176/8 – 25; T-177/1 – 20).

West Florida respectfully requests that the Commission grant the relief prayed for in its petition and award service to the disputed area to West Florida as the power supplier that has served and is currently serving the disputed area.

#### **PART IV - PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **Proposed Findings of Fact:**

1. The disputed area is a geographic area within a four-mile radius of Florida Gas Transmission's Station 13/13A in Washington County, Florida.

2. West Florida is the current power supplier to Florida Gas Transmission's Compression Station 13 near Hinsons Crossroads in Washington County, Florida, and has been serving FGT on its 35-acre site since 1962.

3. West Florida has 390 customers within a four-mile radius of FGT's Station 13/13A.

4. There are no Gulf Power Company customers within four-miles of FGT's Station 13/13A.

5. The planned addition of electric motors and compressors to Station 13/13A is part of FGT's Phase V Expansion Project to increase the total station horsepower.

6. The purpose of Station 13A is to add incremental pressure to the FGT pipeline over and above what is already available.

7. The electric motors, the land on which the motors will sit, the building that the motors will be housed in, and all ancillary equipment in Station 13A will be owned by FGT.

8. The electric motors that will operate the new compressors at Station 13A will be operated and maintained by FGT.

9. West Florida has served customers in this disputed area since 1960.

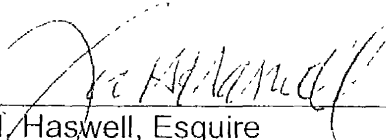
**Proposed Conclusions of Law:**

1. Chapter 366 speaks to "Territory", not to customers as the Florida Supreme Court has ruled, a customer has no organic, economic or political right to choose an electric supplier merely because he deems it to be to his advantage, (Story

v. Mayo, 217 So.2d 304 (Fla. 1968), Lee County Elec. Co-op. v. Marks, 501 So.2d 585 (Fla. 1987)).

2. A customer of a resident electric utility may not bypass the utility to take service from a neighboring non-resident electric utility through the devise of contracting for service through a third party energy converter regardless of a claim that it is purchasing horsepower or mechanical energy and not electric service, when in fact electric service from the resident utility would have the same result.

Respectfully submitted,



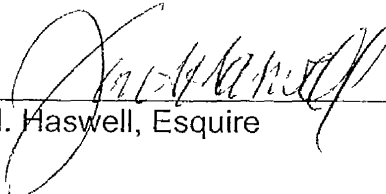
John H. Haswell, Esquire  
Chandler, Lang, Haswell & Cole, P.A.  
211 NE 1st Street (32601)  
Post Office Box 23879  
Gainesville, Florida 32602  
(352) 376-5226 telephone  
(352) 372-8858 facsimile  
Florida Bar No.: 162536

and

Frank E. Bondurant, Esquire  
Post Office Box 854  
Marianna, Florida 32447  
(850) 526-2263 telephone  
(850) 526-5947 facsimile

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Brief of West Florida Electric Cooperative Association, Inc. has been furnished to Jeffrey A. Stone, Esquire and Russell A. Badders, Esquire, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32576-29850; Robert Elias, Esquire and Marlene Stern, Esquire, Legal Division, Florida Public Service Commission, Capital Circle Office Center, 2540 Shumard Oak, Boulevard, Tallahassee, Florida 32399-0850, by U.S. Mail, this 10 day of October, 2001.



John H. Haswell, Esquire

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Territorial Dispute Between  
West Florida Electric Cooperative  
Association, Inc. and Gulf Power  
Company in Washington County,  
Florida.

Docket No.: 010441-EU  
Date Filed: October 10, 2001

\_\_\_\_\_ /

**POST-HEARING STATEMENT OF ISSUES AND POSITIONS  
OF WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.**

West Florida Electric Cooperative Association, Inc. ("WFEC") in compliance with Order Number PSC-01-1825-PHO-EU issued on September 11, 2001, hereby submits it Post-Hearing Statement of Issues and Positions in accordance with Section IV entitled "Post-Hearing Procedures" of the aforesaid Order:

**Issue No. 1: Pursuant to Rule 25-6.0441(1), Florida Administrative Code, what is the service area that is the subject of this territorial dispute?**

An area within a four-mile radius of Hinson Crossroads, an FGT site identified as Station 13, in Washington County, Florida, particularly because GPC's witnesses testified that with additional equipment GPC can serve and will serve new customers along the transmission line extension, not just Enron/FGT.

\*\*\*\*\*

**Issue No. 2:** The issue "what conditions caused this dispute" was dropped, since the parties and the PSC staff agreed that the information relating to this issue is covered in the context of the other issues, as well as Issue No. 11. See discussions in Pages 6 – 8 of the Pre-Hearing Transcript (Document Number 10899).

\*\*\*\*\*

**Issue No. 3: What is the existing and planned load to be served in the disputed area?**

The existing West Florida load is approximately 3000 kW. The load is projected to grow approximately 2% per year, reaching the level 4500 in the next 18 to 20 years. The only prospect for additional load is the expansion of the FGT facility and the addition of two 15,000 horsepower electric motors.

\*\*\*\*\*

**Issue No. 4: Stipulated (see Section X, Page 14 of the Pre-Hearing Order).**

\*\*\*\*\*

**Issue No. 5: Are the planned electrical facilities additions and other utility services to be provided within the disputed area reasonably expected to cause a decline in the reliability of service to existing and future utility customers?**

No, and if service is provided by West Florida, it can be reasonably expected to cause an increase in the reliability of service as well as benefits to WFEC's members due to WFEC's access to the second transformer for use by WFEC's members in the area.

\*\*\*\*\*

**Issue No. 6: Stipulated (see Section X, Page 14 of the Pre-Hearing Order).**

\*\*\*\*\*

**Issue No. 7: Stipulated (see Section X, Page 14 of the Pre-Hearing Order).**

\*\*\*\*\*

**Issue No. 8: Stipulated (see Section X, Page 14 of the Pre-Hearing Order).**

\*\*\*\*\*

Issue No. 9: Stipulated (see Section X, Page 14 of the Pre-Hearing Order).

\*\*\*\*\*

**Issue No. 10: As a matter of law or policy, is it permissible for an existing customer of an electric utility to enter into a contract with a third-party to provide electric service to the existing customer through another electric utility?**

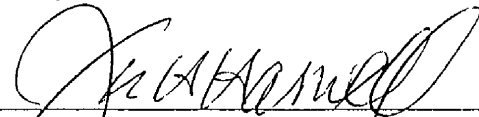
No. A Customer of an electric utility may not bypass the utility to take service from a neighboring utility through the device of arranging service to its facilities with a third-party claiming that it is selling "horsepower", when in fact it is providing the same service the host utility provides.

\*\*\*\*\*

**Issue No. 11: Which utility should be awarded the service area in dispute?**

WFEC should be awarded the service area, which is currently an area historically served by WFEC. WFEC is serving the specific site and the real customer FGT, and with AEC can reliably provide FGT/ECS with all service requirements and service WFEC will be a benefit to WFEC's customers.

Respectfully submitted,



---

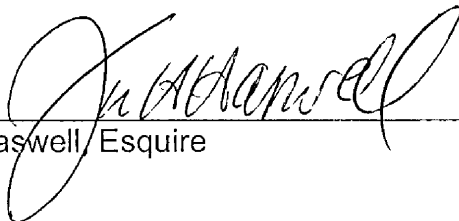
John H. Haswell, Esquire  
Chandler, Lang, Haswell & Cole, P.A.  
211 NE 1st Street (32601)  
Post Office Box 23879  
Gainesville, Florida 32602  
(352) 376-5226 telephone  
(352) 372-8858 facsimile  
Florida Bar No.: 162536

and

Frank E. Bondurant, Esquire  
Post Office Box 854  
Marianna, Florida 32447  
(850) 526-2263 telephone  
(850) 526-5947 facsimile

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Jeffrey A. Stone, Esquire and Russell A. Badders, Esquire, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32576-29850; Robert Elias, Esquire and Marlene Stern, Esquire, Legal Division, Florida Public Service Commission, Capital Circle Office Center, 2540 Shumard Oak, Boulevard, Tallahassee, Florida 32399-0850, by U.S. Mail, this 10 day of October, 2001.

  
\_\_\_\_\_  
John H. Haswell, Esquire