

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: NOVEMBER 19, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (STERN) *MKS RVE*
DIVISION OF SAFETY AND ELECTRIC RELIABILITY
(BREMAN/LEE/FLOYD) *JB* *RS* *JDJ*

RE: DOCKET NO. 010441-EU - PETITION TO RESOLVE TERRITORIAL
DISPUTE WITH GULF POWER COMPANY IN WASHINGTON COUNTY BY
WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.

AGENDA: 12/04/01 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010441.RCM

CASE BACKGROUND

On April 10, 2001, pursuant to Sections 366.04(2)(e), 366.04(5), and 366.055(3), Florida Statutes, and Rule 26-6.0441, Florida Administrative Code, West Florida Electric Cooperative Association, Inc. (West Florida or WFEC) filed a Petition to Resolve Territorial Dispute between West Florida and Gulf Power Company (Gulf). Gulf filed its Answer to the Petition on May 8, 2001. Subsequently, Staff attempted to mediate a resolution between the parties, but no agreement could be reached. A hearing was held on September 19, 2001.

West Florida serves Calhoun, Holmes, Jackson and Washington Counties. The current dispute involves an area in Washington County. Florida Gas Transmission (FGT) proposes to build a new compressor station in Washington County, referred to as the Phase

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V Compressor Station No. 13A, or simply Station 13A. It will be located next to FGT's existing compressors at Station 13.

FGT has installed or will soon install two new motors to power the new compressors at Station 13A. The new motors convert electricity into horsepower. ECS has an agreement with FGT whereby ECS is responsible for generating horsepower to run the compressors. ECS asked Gulf to provide electricity for the motors.

On February 26, 2001, Gulf and ECS filed a Joint Petition for Declaratory Statement concerning Gulf's eligibility to serve ECS. That Petition was assigned Docket No. 010265-EI. On April 30, 2001, Gulf and ECS waived the 90 day deadline for action on the Petition. A decision on the Petition for Declaratory Statement will not be made until a decision on the Petition to Resolve Territorial Dispute is made.

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?

PRIMARY RECOMMENDATION: The 35 acre parcel owned by FGT on which Station 13 and the Phase V Compressor Station 13A are located should be designated as the service area. (STERN)

ALTERNATE RECOMMENDATION: The disputed service area is the area within a four-mile radius of Hinson Crossroads substation, including Station 13A. The service area should be designated as the footprint of the two 15,000 horsepower motors at Station 13A. (FLOYD, BREMAN, LEE)

POSITIONS OF THE PARTIES:

WEST FLORIDA:

An area within a four-mile radius of Hinson Crossroads, an FGT site identified as Station 13, in Washington County, Florida.

GULF:

The only active dispute is over service to Enron Compression Services at Station 13A which is located adjacent to FGT's existing Station 13 site in Washington County, FL.

STAFF ANALYSIS FOR PRIMARY RECOMMENDATION:

West Florida describes the area within a four-mile radius of Hinson Crossroads as remote and rural. (T 60). West Florida states:

There are approximately 390 services in the immediate area. There are no stores, shops, industries or businesses of any kind with the exception FGT, a bait and tackle shop and a junk yard, within 7 miles of the crossroads. The area is comprised mostly of single-family residences, fishing camps and farming operations. (T 60).

The density of residential customers is less than six per mile. (T 30).

West Florida has served the Hinson Crossroads area since 1946, (T 30), and has served FGT at Station 13 since 1962. (T 34). Gulf's nearest customer is over four miles away in a direct line and 6 miles away by road. (T 34). Exhibit 2, part of Witness Rimes' testimony, shows that the nearest single-phase service of Gulf Power is four miles away from FGT's property and the nearest three-phase service of Gulf Power is nine miles away. (B 7).

FGT is located on a 35 acre parcel known as Station 13. (B 7). West Florida explains that Station 13A "is located on the same 35-acre parcel and physically joins Station 13." (B 7). According to Exhibit GC-5, Station 13 and 13A "share all common facilities, including offices, parking lots, driveways and employees." (B 7).

Gulf's position is that the Commission "should designate only the confines of the equipment comprising ECS's electric load at Station 13A as the area in dispute." (T 110). Witness Spangenberg describes Gulf's proposed disputed area as follows:

Station 13A ... is a vacant piece of land. It has no population and no other utility customers, presently or projected. It can best be characterized as a prospective industrial site particularly suited to natural gas pipeline interaction and/or ancillary services because of its location in close proximity to two existing pipelines and FGT's Station 13. (T 115).

West Florida argues that in deciding territorial disputes, the Commission is required to consider territory not customers. First, West Florida explains that the language of Chapter 366 refers to territories, not customers. In addition, West Florida relies on Order No. PSC-98-0174-FOF-EU, claiming that in that Order the Commission accepted the following as a conclusion of law:

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)).

West Florida further argues that the Commission considers historic service area to be a factor in deciding territorial disputes. (B 7-10). West Florida relies on Order No. 12324,

which addressed a territorial dispute between Suwanee Valley Electric Cooperative, Inc., and Florida Power Corporation (FPC) over service to a prison. See Order No. 12324, issued August 4, 1983, in Docket No. 83-0271-EU. FPC argued that it was the historic service provider to the area because it had a transmission line near the prison. The Commission awarded service to the electric cooperative because it historically and currently served customers in the area while FPC did not.

West Florida also relies on Order No. 18886, which addressed a 1988 dispute between Gulf and West Florida over service to a new high school in Holmes County. See Order No. 18886, issued February 18, 1988, in Docket No. 87-0235-EI. Gulf was already serving an elementary school located adjacent to the property on which the high school would be built, without objection from West Florida. The school board determined that West Florida and Gulf could serve the high school for the same cost and requested service by West Florida. The Commission awarded service to Gulf because Gulf had been providing service to the "school complex property" since 1981.

West Florida cites a number of additional cases in support of its contention that it should provide service to ECS because West Florida is the historic service provider in the area. (B. 7-10). See Order No. 13668, issued September 10, 1984 in Docket No. 83-0484-EU, and upheld in Gulf Power Company v. Public Service Com'n, 480 So.2d 97 (Fla 1985); Order No. 16106, issued May 13, 1986 in Docket No. 85-0087-EU; Order No. PSC-98-0178-FOF-EU, issued January 28, 1998, in Docket No. 97-0512-EU.

Gulf argues that the disputed area should not extend beyond the footprint of the compressor engines at Station 13A, because there is no controversy over service to any other customer. (B 8). Gulf explains that in the past the Commission has declined to rule on hypothetical disputes. Gulf relies on Order No. 20892 in which the Commission dismissed a petition filed by CHELCO, an electric cooperative with territory that is adjacent to West Florida's. Gulf quotes the following passage:

The Commission's authority to resolve such disputes stems from Section 366.04(2)(e), Florida Statutes (1987) which the Commission itself has expressly limited to "actual and real" controversies; no statutory basis for interceding in a potential dispute exists." See, Order No. 15348 issued on November 12, 1985, in Docket No. 850132-EU. Thus, CHELCO's

complaint is, at best, premature. If and when Gulf actually attempts to serve a customer within CHELCO's service area, the cooperative will have a cause of action.

Gulf states that it does not intend to serve any present customer of West Florida's, and that it will not serve any future prospective customer in the vicinity of Station 13A if it requires uneconomic duplication of West Florida's facilities. (T 111).

Gulf also argues that deciding on service to an area of the size proposed by West Florida would conflict with the Commission's established policy of avoiding uneconomic duplication in undeveloped areas. (B 9). Gulf relies on Gulf Coast Electric Cooperative v. Johnson, 727 So.2d 259 (Fla. 1999) [hereinafter Gulf Coast I], in which the court determined that prematurely awarding service rights in an undeveloped area prevents the Commission from determining which utility will provide the most economic service when the area begins developing. (T 112).

Staff recommends that the service area be designated as the entire 35 acre site on which both Station 13 and Station 13A are located. This is the most functional designation and preserves flexibility in service provision as the area develops. For reasons provided below, West Florida's proposed service area is too large, and Gulf's proposal potentially leads to the anomalous situation of a small Gulf territory being located within a slightly larger West Florida territory.

Delineating a service area within an undeveloped area, in which expansion patterns are unknown, eliminates flexibility that may be needed to implement the lowest cost service when the area becomes developed. See Order No. PSC-98-0174-FOF-EU, issued January 28, 1998 in Docket No. 930885-EU (affirmed in Gulf Coast I at 260. For this reason, Staff sees no benefit in drawing boundaries around the Hinson Crossroads area at this time. In fact, drawing such boundaries may be detrimental because it eliminates flexibility.

West Florida argues against delineating FGT's 35 acre site as the service area and cites a number of Orders in which the Commission does delineate territories in undeveloped areas. (B 7-10). Staff notes that the majority of orders cited were issued in the 1980's and all pre-date Gulf Coast I. The Commission has the discretion to decide each territorial dispute case-by-case. See

Gulf Coast I at 265. Furthermore, the Commission is not obligated to delineate service areas in undeveloped areas when there is no dispute in such areas. See id. In addition to the fact that Staff sees no benefit to designating a large service territory at this time, Staff also believes that no legal precedent obligates the Commission to do so.

Gulf witness Howell testified that ECS requested that Gulf provide electricity only for the two 15,000 horsepower motors that will run FGT's new compressors. (T 106). ECS has not requested that Gulf provide electricity to the building in which the motors will be housed, and the facilities Gulf is building to run the motors are not capable of providing electricity for the building. (T 106). Service to the motors will be delivered at 12,470 volts while service to the building will likely be delivered at 120/240 volts. (TR 106).

West Florida notes that ECS does not know who will be providing electricity for lighting, air conditioning, computers and other ancillary services at Station 13A. (Exh 14 (Hilgert Deposition) 22). West Florida further notes that ECS told West Florida that the electric load at Station 13 would likely increase. (Exh 14 (Hilgert deposition) 22). West Florida deduces from this that the ancillary electric needs at Station 13A "would be served by extending FGT's internal electric system into Station 13A." (B 18). Staff believes this is the logical conclusion to be drawn. FGT may well rely on West Florida to serve the building's ancillary needs because West Florida is the only utility currently capable of doing so.

These circumstances potentially lead to the situation in which Gulf will provide service to engines located within a building served by West Florida. Gulf offers no evidence to refute the likelihood of this scenario developing. This leads to a situation in which territories overlap, and would therefore conflict with the purpose of delineating territories.

For the reasons provided above, Staff recommends that the service area be designated as the 35 acre property on which Stations 13 and 13A are located.

STAFF ANALYSIS FOR ALTERNATE RECOMMENDATION: Although Gulf Power Company says that the only dispute is over who serves ECS Station 13A, West Florida disagrees and states that the disputed area is

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the area within a four-mile radius of Station 13A. Thus, it is clear that the entire area within the four-mile radius is in dispute. However, just because an area is in dispute does not obligate the Commission to establish territorial boundaries throughout the entire disputed area at this time.

There are currently no Commission approved territorial boundaries in the disputed area. It is Commission policy not to prematurely draw territorial boundary lines. See Order No. PSC-98-0174-FOF-EU, issued January 28, 1998 in Docket No. 930885-EU. This policy has been upheld by the Florida Supreme Court. See Gulf Coast I at 265.

ISSUE 2: What is the existing and planned load to be served in the disputed area?

PRIMARY RECOMMENDATION: The existing load is that which FGT currently requires for Station 13. The planned load will be that which is required to serve Station 13A, including both the compressor motors and ancillary electric services. (STERN)

ALTERNATE RECOMMENDATION: The existing load in the four-mile vicinity of Station 13 is approximately 3,000 kilowatts including service to Station 13, which has a peak demand of 159 kilowatts. Projected load growth is approximately 2% per year absent the proposed new load at Station 13A. The estimated peak demand of two electric motors to be sited at Station 13A is approximately 20,000 kilowatts. (BREMAN)

POSITIONS OF THE PARTIES:

WEST FLORIDA:

The existing West Florida load is approximately 3000kW. The load is projected to grow approximately 2% per year, reaching the level 4500kW in the next 18 to 20 years.

GULF:

Gulf has received a request for electric service from ECS to serve two 15,000 horsepower electric motors at Station 13A. No utility currently provides electric service to Station 13A and there are no customers in that area. Gulf knows of no future planned load within the disputed area.

STAFF ANALYSIS FOR PRIMARY RECOMMENDATION: The existing load is that which FGT currently requires, and the planned load will be that required to run Station 13A. The planned load to be served at FGT's property is the projected load for the new engines at Station 13A, 20,000 KW, plus the electricity needed run the building in which the new engines will be located.

STAFF ANALYSIS FOR ALTERNATE RECOMMENDATION: Neither Gulf nor staff took issue with West Florida's estimate of its retail load within the four-mile vicinity of Station 13. The estimated retail load West Florida currently serves is 3,000 kilowatts including the

existing service to Station 13. (T 62, 80, 194). The existing load at Station 13 has a peak demand of 159 kilowatts. (T 62, 194). A 2% annual growth rate is projected for the area. (T 80). West Florida's estimates do not include retail service to the proposed electric motors at Station 13A. (T 80, 195). The peak demand of the proposed two 15,000 horsepower electric motors is estimated to be near 20,000 kilowatts. (T 99, 120). Consequently, the total projected load for the four-mile area surrounding Station 13 will be approximately 23,000 kilowatts after Station 13A is completed. The load characteristics of the proposed new load is substantially different from the existing load in the disputed area.

STIPULATED

ISSUE 3: What is the estimated cost for electric utility facilities to adequately and reliably serve the planned load in the disputed area?

The estimated cost of \$5.5 million for electric utility facilities is approximately the same for either utility to provide service. This amount includes a 230KV switching station, approximately 6 miles of 230 KV transmission cable and poles from the new switching station to a new substation located at Station 13A, a new substation at Station 13A, land purchases, and one transformer.

ISSUE 4: Are the planned electrical facility 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?

RECOMMENDATION: No. The planned electrical facility additions and other utility services are not expected to cause a decline in the reliability to existing and future customers of either West Florida or Gulf. (BREMAN, LEE)

POSITIONS OF THE PARTIES

WEST FLORIDA:

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.

GULF:

No.

STAFF ANALYSIS: The position of both companies is that the planned facilities and services to Station 13A can not be reasonably expected to cause a decline in reliability to existing and future customers of either utility in the area. (T 137, 154-156, 195). West Florida rebutted claims by Gulf that West Florida's service was inadequate, risky or insufficient. (T 10-12, 152-154, 161-163, 172-173, 176-177). Gulf's views stem from an expectation that West Florida would use a 115KV transmission tap or a 230KV tap extending from Alabama rather than a six mile 230KV transmission tap to serve Station 13A. (Exh 6; T 123, 154). However, West Florida is suggesting using the same or similar 230KV facilities proposed by Gulf. (T 124, 154). Further, the Commission approved the proposed stipulation addressing proposed facilities and the estimated costs to bringing adequate and reliable service to Station 13A. (T 19, and Issue 3). Consequently, there is no material difference in adequacy or reliability between West Florida and Gulf in providing service to Station 13A.

West Florida identifies a potential reliability benefit if West Florida were allowed to provide service to Station 13A because they would seek to integrate the new facilities with those

currently used to serve existing customers in the area. (T 155, 156). Staff agrees that the option exists. However, there is no evidence supporting a need to improve West Florida's service reliability for existing or future customers within the four-mile vicinity of Station 13. Further, use of the proposed facilities for additional customers may require substantial voltage conditioning equipment and additional costs associated with the voltage dips that occur during Station 13A motor start-ups. (Exh 8 at 15, 16).

Therefore, the planned facilities and services to be provided within the disputed area is not expected to cause a decline in the reliability of service to existing and future customers of either utility.

STIPULATED

ISSUE 5: What is the nature of the disputed area with respect to its population, the type of utilities seeking to serve it, degree of urbanization, proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services?

The nature of the disputed area is rural as defined by Section 425.03(1), Florida Statutes. Retail service to Station 13A is the only present and reasonably foreseeable future requirement of the area in dispute. The general vicinity is expected to remain rural with slow residential and agricultural load growth. Station 13A is approximately 9 miles from Vernon, 12 miles from Bonifay, 10 miles from Caryville, and 18 miles from Chipley.

STIPULATED

ISSUE 6: What utility does the customer prefer to serve the disputed area?

The customer, ECS, prefers retail service from Gulf.

STIPULATED

ISSUE 7: Will the actions of either West Florida or Gulf cause uneconomic duplication of electric facilities with regard to serving the load in the disputed area?

The construction of the facilities identified in Issue 4 either West Florida or Gulf, will not cause uneconomic duplication of electric facilities with regard to serving the new retail load at Station 13A.

STIPULATED

ISSUE 8: Does West Florida have the right of access, through its wholesale power provider or otherwise, to the same transmission facilities that Gulf proposes to tie into to provide service to the disputed area?

Yes. Gulf does not have exclusive access to the existing and future electric transmission system necessary to serve the new retail load at Station 13A.

ISSUE 9: 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?

RECOMMENDATION: It is not necessary to decide this issue to resolve the territorial dispute. (STERN)

POSITIONS OF THE PARTIES:

WEST FLORIDA:

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 services 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.

GULF:

It is not necessary to decide this issue in order to resolve the territorial dispute. No existing customer is being or will be provided electric service by a third party regardless of the outcome of this proceeding. The only electric service to be provided in this matter is to ECS.

STAFF ANALYSIS: West Florida maintains that FGT, Enron North America and ECS are all of Enron Corporation because they all have the same principal place of business in Houston. (T 161). ECS functions as the third party referenced in West Florida's Position Statement for this issue. (B 13). West Florida argues that it is not permissible for FGT to contract with ECS for power, in this

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case horsepower, when ECS is getting the electricity to generate the horsepower from Gulf as opposed to West Florida. West Florida contends that to allow this type of arrangement is to allow retail wheeling and customer choice in Florida.

West Florida explains that Gulf and ECS claim that ECS is providing compression services and mechanical energy to FGT, not electricity. (Exh 6; Exh 14 at 15). West Florida argues that, in fact, ECS is providing electricity to FGT and that the distinction between supplying electricity and supplying horsepower is contrived in this situation. West Florida further explains that if Gulf's position is accepted then ECS could contract with the Public Service Commission to provide "illumination services" for the lights and BTUs for the heat. (B 14). The PSC could lease the light fixtures and heating coils to ECS and ECS could claim it was a new electric customer in Leon County with the right to choose its own power supplier. (B 14).

Staff believes that this issue need not be decided. The territorial dispute can be resolved without reaching this issue.

ISSUE 10: Which utility should be awarded the service area in dispute?

PRIMARY RECOMMENDATION: West Florida should provide electricity to the service area because it is the historical service provider for the area. (STERN)

ALTERNATE RECOMMENDATION: Gulf Power Company should be awarded the service to ECS at Station 13A. However, the Commission should decline to establish any other territorial boundary in the disputed area that lies within a four-mile radius of Hinson Crossroads. (FLOYD, BREMAN, LEE)

POSITIONS OF THE PARTIES

WEST FLORIDA:

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.

GULF:

No uneconomic duplication of facilities will occur if Gulf provides the electric service to Station 13A as requested by the customer. There are no factors that warrant overruling the customer's choice of Gulf Power as electric supplier for Station 13A. Therefore, service to Station 13A should be awarded to Gulf.

STAFF ANALYSIS FOR PRIMARY RECOMMENDATION:

West Florida argues that FGT's filing with FERC for its Phase V Expansion (Exhibit 11) treats the new load as an expansion rather than as an entirely new and separate compression station (B 16-17). West Florida notes that FGT will own the motors, will operate and maintain them and that ECS will have no employees on the site. (Exh 14 (Hilgert deposition) at 23). West Florida further notes that the ancillary electric needs at Station 13A will probably be

served by FGT. (B 18). Based on the above circumstances, West Florida concludes that the arrangement "is a sham to try and avoid FGT's current power supplier." (B 18).

West Florida also argues that if Gulf is awarded service, Gulf would consider using the new facilities it is building to serve the motors to serve other new load in the area. (Exh 7 (Howell deposition) at 15; Exh 13 (Spangenberg deposition) at 9-10). West Florida claims that even if Gulf has no intention of serving anyone else in the area, if Gulf is awarded the service area Gulf would be equipped to serve other customers, thereby creating the potential for future duplication of facilities. (B 22).

Gulf argues that pursuant to Section 366.03, Florida Statutes, and its Tariff for Retail Electric Service, it could not deny service to ECS once ECS requested service from Gulf. Gulf further argues that there will not be uneconomic duplication of facilities if Gulf provides service. Finally, relying on Gulf Coast Electric Cooperative v. Clark, 674 So.2d 120 (Fla. 1996) [hereinafter Gulf Coast II], Gulf argues that absent uneconomic duplication, the customer's preference should be the controlling factor in deciding who should provide the service. (B 18).

Section 366.04(2)(e), Florida Statutes, grants the Commission authority to resolve territorial disputes and further provides:

In resolving territorial disputes, the Commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility service.

Rule 25-6.0441(2), Florida Administrative Code, elaborates on but does not limit, the factors that the Commission may consider when deciding a territorial dispute. The Rule is provided below.

(2) In resolving territorial disputes, the Commission may consider, but not be limited to consideration of:

(a) the capability of each utility to provide reliable electric service within the disputed area with its

existing facilities and the extent to which additional facilities are needed;

(b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;

(c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and

(d) customer preference if all other factors are substantially equal.

Both utilities can provide the same quality of service at reasonable price without uneconomic duplication. (See Issues 3, 4, and 7) Staff recommends that West Florida be awarded the service area because it is currently providing service to FGT on that parcel and has historically provided service in the area.

Gulf relies on Gulf Coast II for the proposition that customer choice should be determinative when all other factors are equal. In that case, both the utilities had been serving the same area for many years. See id at 123. Here, West Florida has been serving the service area for many years and Gulf has not provided service in the area. Thus, not all factors are not equal and the customer's preference does not control.

West Florida identifies many orders in which the historic service area is weighed heavily in deciding territorial disputes. These orders are addressed under Issue 1. The facts in Order No. 18886 are similar to those here. In Order No. 18886, Gulf was awarded service to a new high school adjacent to an existing elementary school because Gulf had historically served the school complex. The Commission treated the land occupied by both schools as a single complex. One entity owned the land on which both schools were located. Although the Commission also found that West Florida had uneconomically duplicated facilities in trying to provide service to the high school, the Commission did not award

the service area to Gulf on that basis alone. That Gulf had historically served the school complex was weighed very heavily.

Likewise, in the current dispute, Staff believes that because FGT owns the land occupied by Stations 13 and 13A, the 35 acres should be treated as a single unit with a single owner. Because West Florida has historically served a part of this parcel, it should serve the entire parcel.

STAFF ANALYSIS FOR ALTERNATE RECOMMENDATION: The alternate Staff recommendation is based on consideration of each of the four requirements laid out in the Commission's rule on territorial disputes.

25-6.0441(2) (a) the capability of each utility to provide reliable electric service within the disputed area with its existing facilities and the extent to which additional facilities are needed;

Neither utility can adequately serve ECS at Station 13A with existing facilities. Both parties agree that Station 13A requires 230 kV service and that the best way to get 230 kV service to Station 13A is to build a six-mile 230 kV transmission line from the customer's site to Gulf Power's existing 230 kV grid. West Florida's CEO, Mr. William S. Rimes, stated that "In fact, we would build the same six-mile 230 kV transmission line that GPC's currently building, perhaps even build it cheaper." (T 34). He did not go on in his testimony to explain how West Florida would build the line less expensively. Also, the parties reached a stipulation on Issue 4 in this proceeding stating that, "The estimated cost of \$5.5 million for electric utility facilities is approximately the same for either utility to provide the service."

Gulf Power Company has the only 230 kV transmission system in Washington County. (T 16). However, through the FERC's open access requirements, West Florida through Alabama Electric Cooperative (AEC) can access Gulf's 230 kV system and thus provide service to Station 13A. (T 154).

It is clear that both utilities have the capability of providing reliable service through the additional facilities that Gulf Power Company is currently constructing.

25-6.0441(2) (b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;

The area within a four-mile radius of Hinson's Crossroads is rural in nature. Both utilities serve rural customers in Washington County and have done so for many years. (T 185-186, 26-27). But, part of the disputed area, namely Station 13A, is quite unique in that the huge motors that will be installed to provide compression power will require 230 kV service to operate reliably. Neither utility has existing facilities that can meet these requirements. Gulf Power Company is the utility that has the nearest 230 kV source to serve the unique load at Station 13A.

It is clear that the disputed area is rural in nature, except for the very discrete requirements for ECS at Station 13A. While it may be argued that Gulf Power Company has the closest facilities with a source that can meet the needs of ECS at Station 13A, Staff believes that this factor does not substantially favor one utility over another. This is because of West Florida's ability to access Gulf Power Company's 230 kV system through AEC as mentioned previously.

25-6.0441(2) (c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future;

As mentioned above in the discussion of Rule 25-6.0441(2) (a), the parties reached a stipulation about the cost to provide service to ECS at Station 13A. Staff agrees with the proposed stipulation. So, clearly, consideration of this factor is not determinative of who should serve.

25-6.0441(2) (d) customer preference if all other factors are substantially equal.

The customer, in this case ECS, prefers Gulf Power Company to be the provider of electricity to Station 13A. (T 114-115). Consideration of this factor clearly favors Gulf Power Company. Since the other factors in the rule do not substantially favor either utility, staff believes that customer choice should be

honored. The customer should be able to choose when the exercise of that choice causes no harm from the present position of any utility's other customers. In particular, this means that the customers of either utility may be better off if their utility served Station 13A and neither utility's other customers are worse off than if Station 13A never existed.

In this case Gulf Power Company has acted responsibly and prudently to work with the customer to design and build the necessary facilities to cost-effectively and reliably serve ECS at Station 13A. Gulf Power Company will not be uneconomically duplicating any facilities owned and operated by West Florida in the area. In fact, there is no duplication at all, economic or uneconomic.

Since we do not know how this area may develop in the future, and in keeping with the Commission's prior policy on not prematurely drawing territorial boundary lines, staff recommends that the Commission not establish other territorial boundaries within the disputed area beyond assigning service to ECS at Station 13A to Gulf Power Company.

ISSUE 12: Should this docket be closed?

RECOMMENDATION: This docket should be closed 32 days after the issuance of the order to allow the time for filing an appeal to run.

STAFF ANALYSIS: This docket should be closed 32 days after the issuance of the order to allow the time for filing an appeal to run.