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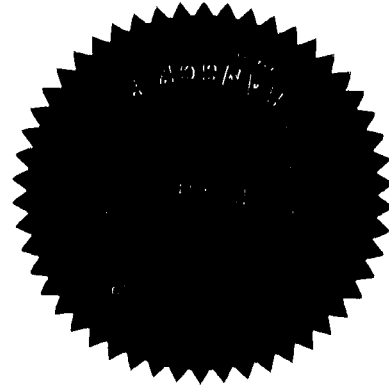
OCT 24 1995

CLERK, SUPREME COURT

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION ~~By~~ Deputy Clerk

IN RE: Petition to Resolve)
territorial dispute with GULF)
COAST ELECTRIC COOPERATIVE,)
INC. by GULF POWER COMPANY.)
_____)

DOCKET NO. 930885-EU



PROCEEDINGS:	Prehearing Conference
BEFORE:	COMMISSIONER SUSAN F. CLARK, Prehearing Officer
DATE:	Thursday, September 29, 1994
TIME:	Commenced at 9:50 a.m. Concluded at 10:35 a.m.
PLACE:	101 East Gaines Street Tallahassee, Florida
REPORTED BY:	JANE FAUROT Notary Public in and for the State of Florida at Large

ACCURATE STENOTYPE REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(904) 878-2221
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DOCUMENT NUMBER-DATE

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APPEARANCES:

JEFFREY A. STONE, Esquire, Beggs & Lane, 700 Blount Building, 3 West Garden Street, Pensacola, Florida 32576 and JOSEPH P. CRESSE, Class B Practitioner, Messer, Vicker, Caparello, et al., 215 South Monroe Street, Tallahassee, Florida 32301, on behalf of Gulf Power Company

JOHN H. HASWELL, Esquire, Chandler, Lang & Haswell, 211 N.E. First Street, Gainesville, Florida 32601 and JOHN P. FLOYD, 408 Long Avenue, Port St. Joe, Florida 32456, on behalf of Gulf Coast Electric Cooperative, Inc.

MARTHA CARTER BROWN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399, on behalf of the Commission Staff.

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P R O C E E D I N G S

1
2 COMMISSIONER CLARK: We'll call the prehearing to
3 order. Ms. Brown, will you please read the notice.

4 MS. BROWN: By notice issued September 22nd, 1994,
5 this time and place was set for a prehearing conference
6 in Docket Number 930885-EU, in re: petition to resolve
7 territorial dispute with Gulf Coast Electric
8 Cooperative, Inc., by Gulf Power Company. The purpose
9 of the prehearing conference is set out in the notice.

10 COMMISSIONER CLARK: We will take appearances.
11 Mr. Stone.

12 MR. STONE: Yes, Commissioner. And please accept
13 my apology for being late, I'm sorry, we were held up.

14 I'm Jeffrey A. Stone of the law firm of Beggs &
15 Lane, and I'm here representing Gulf Power Company.
16 With me today, who will be participating in this
17 proceeding, is Joe Cresse, who is a Class B
18 Practitioner, and is on notice as being a
19 representative of Gulf Power Company.

20 COMMISSIONER CLARK: Mr. Haswell.

21 MR. HASWELL: My name is John Haswell of the firm
22 of Chandler, Lang & Haswell at 211 Northeast First
23 Street, Gainesville, Florida, on behalf of Gulf Coast
24 Electric Cooperative, Inc.

25 With me today is Mr. Hub Norris (phonetic), the

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1 General Manager of Gulf Coast Electric, and also
2 Mr. Floyd.

3 COMMISSIONER CLARK: And Mr. who?

4 MR. HASWELL: Floyd.

5 MR. FLOYD: My name is Patrick Floyd. I'm
6 co-counsel for Gulf Coast Electric Cooperative, 408
7 Long Avenue, Port St. Joe, Florida.

8 COMMISSIONER CLARK: Thank you.

9 MS. BROWN: Martha Carter Brown representing the
10 Florida Public Service Commission Staff. My address is
11 101 East Gaines Street, Tallahassee, Florida.

12 COMMISSIONER CLARK: Okay. I have signed an order
13 with respect to the motion to strike portions of the
14 testimony to limit the scope of the issues and the
15 motion for a continuance.

16 MS. BROWN: Yes, Commissioner. There is one
17 motion still outstanding that is reflected in the
18 prehearing order. That is a motion that Gulf filed a
19 day or two ago to compel discovery. In the motion
20 itself, Gulf says that they believe they will be able
21 to work out their differences on discovery, and so,
22 therefore, I recommend we take no action on that motion
23 at the moment.

24 COMMISSIONER CLARK: Mr. Stone.

25 MR. STONE: Commissioner, that is correct.

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1 Yesterday at 5:02 p.m., I received a copy of a letter
2 that had been sent to Mr. Haswell. It was faxed to me
3 by AEC, indicating that they intended not to cooperate
4 fully in producing the documents that we had requested
5 pursuant to our request for production. I have not had
6 an opportunity to review that letter with Mr. Haswell.
7 There is certain information that they said they will
8 produce at the deposition and we would take that up.
9 As far as the matters that are not to be -- that they
10 indicate they will not be producing, it is my
11 understanding that it is their contention that they are
12 proprietary and confidential matters, and they argue
13 that they are not relevant to this proceeding. These
14 relate to purchased power contracts, they relate to the
15 incremental cost of providing power, and we believe
16 that they are relevant and that they are calculated to
17 lead to relevant information, and that they are
18 appropriate for inquiry in the course of the deposition
19 of Mr. Parish. But that is something that we will take
20 up with Mr. Haswell, and we hope that we will be able
21 to resolve.

22 COMMISSIONER CLARK: Okay. The hearing is
23 scheduled for October?

24 MS. BROWN: 19th and 20th.

25 COMMISSIONER CLARK: Then I assume you will bring

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1 the matter back to my attention or to the Staff's to
2 let them that discovery cannot be worked out. And I
3 will rule on a motion if I have to. Is that all right,
4 Mr. Haswell?

5 MR. HASWELL: Yes, ma'am. But I would like to
6 make it clear that the document production request that
7 was identified in a letter I received from Ms. Liles,
8 that is attached to their motion to compel addressed
9 documents that AEC has in its possession. The
10 documents, to my knowledge -- Jeff, we can discuss this
11 after the hearing if you want to -- the documents that
12 Gulf Coast had in its possession, we either gave them
13 to them at the deposition of Mr. Norris and Mr. Gordon,
14 other than I believe a Form 7 that we need to get
15 together on. This firm, neither Mr. Floyd nor I
16 represent Alabama Electric Cooperative, Inc. We made
17 the pledge that we would request these documents from
18 AEC, which we did, and this is AEC's response to it.
19 So with that caveat, I think what Mr. Stone said about
20 the procedure is accurate.

21 MR. STONE: Commissioner, the problem we have is
22 this. Mr. Jeff Parish has provided testimony on behalf
23 of Gulf Coast Electric Cooperative in this matter. Mr.
24 Parish is an employee of Alabama Electric Cooperative.
25 He has brought into issue the incremental cost of

1 providing electric power, both by purchased power and
2 by generation. The documents that we have requested
3 have been an effort to find out what that cost of power
4 is. We believe it is pertinent to the issues. It is
5 certainly related to the testimony that Mr. Parish has
6 filed. I understand that Alabama Electric Cooperative
7 is not a party in interest in this proceeding, but they
8 are the power supply agent for Gulf Coast Electric
9 Cooperative, and they have testified to that effect.
10 Gulf Coast is a member of Alabama Electric Cooperative,
11 they have the power to demand production of certain
12 documents as a member. But beyond that, this
13 information is pertinent to the testimony of Mr.
14 Parish, and we need to pursue it. If Mr. Haswell is
15 saying that we need to go to the effort to serve a
16 subpoena on Alabama Electric Cooperative, we are
17 prepared to do that.

18 COMMISSIONER CLARK: Mr. Stone, I think you have
19 indicated you are going to try and work it out. If you
20 can't, you can come back before me, or let Staff know
21 and I will address those motions. I would point out he
22 makes a good point. If Mr. Parish is an employee of --
23 what is it, Alabama Electric?

24 MR. STONE: Alabama Electric Cooperative.

25 COMMISSIONER CLARK: Cooperative, and you are part

1 of that cooperative, and if it is information relative
2 to incremental cost, you will have to be prepared to
3 defend against that discovery.

4 MR. HASWELL: Yes, ma'am. And I would just argue
5 I'm not sure what Alabama would even furnish to us if
6 we asked them, even as a member.

7 COMMISSIONER CLARK: Well, there are sanctions.
8 If the discovery can't be made, you won't be allowed to
9 offer the testimony.

10 MR. HASWELL: That's correct. And, in addition,
11 there would have to be a showing that it was really
12 relevant to the proceeding.

13 COMMISSIONER CLARK: Absolutely, Mr. Haswell. I
14 just want you to know that you need to work it out and
15 address the legal issues as to whether it is
16 discoverable.

17 MS. BROWN: Commissioner, if I might suggest that
18 perhaps we could try to work out a date certain by
19 which this will happen in order that we don't get right
20 up against the hearing dates.

21 MR. STONE: We have scheduled Mr. Parish's
22 deposition for the 6th, and we have scheduled a further
23 document review at Gulf Coast's headquarters in
24 Wewahitchka for the 7th. And it is our hope that in
25 advance of those two dates, that we will have gotten

1 this issue resolved so that those two efforts will be a
2 productive exercise.

3 MS. BROWN: Well, if then by the 10th, you could
4 let us know the status of that, I think that would be
5 helpful.

6 MR. STONE: Certainly.

7 COMMISSIONER CLARK: Mr. Haswell, is that all
8 right?

9 MR. HASWELL: I'm sorry, I was talking.

10 COMMISSIONER CLARK: We are going to set the 10th
11 as the date by which you should --

12 MR. HASWELL: (Inaudible. Microphone not on.)

13 COMMISSIONER CLARK: Or notify us of the status of
14 them so we are informed as to --

15 MR. HASWELL: That's fine.

16 COMMISSIONER CLARK: -- the discovery taking place
17 or not taking place so that we are not right up against
18 the hearing and trying to resolve these issues.

19 Are these gentlemen with you or is there another
20 party here I'm missing?

21 MR. STONE: They are with me.

22 COMMISSIONER CLARK: Okay.

23 MR. HASWELL: Commissioner, we also have a
24 request, and we would also accommodate Gulf Power on, I
25 think, one of their latest requests. We have submitted

1 a request for interrogatories and production of
2 documents, which if you follow the 30-day time frame
3 would, I think, fall due the Monday before the hearing.
4 And, in addition, Gulf Power has submitted some
5 interrogatories, I think, on September 7th, which with
6 five days -- adding five days for mailing, we would
7 produce those somewhere around October 12th. I would
8 hope that the parties might agree that we would shorten
9 that time frame so that both sides would have enough
10 time to review those before the hearing. Would the
11 10th of October be a good date for us to conclude all
12 answers to all interrogatories and production of
13 documents?

14 MR. STONE: I don't know, the volume of material
15 that was requested in the set of interrogatories that
16 you just served on us is much greater than the volume
17 of material that we requested in ours that was served
18 on you on September 7th. I don't know that we can meet
19 the 10th. We certainly were prepared to respond in a
20 timely fashion.

21 COMMISSIONER CLARK: Do the best you can. I think
22 you both have an interest in seeing that discovery is
23 provided in a timely way. And I would hope that to the
24 extent you can, you would both provide timely
25 discovery. Anything else?

1 MS. BROWN: Commissioner, I don't think there are
2 any other preliminary matters that I'm aware of, I
3 don't know if the parties have anything before we start
4 going through the prehearing order. They're not
5 indicating that there is anything.

6 MR. STONE: I think we are prepared to go forward
7 with the order at this point.

8 COMMISSIONER CLARK: All right.

9 MS. BROWN: Commissioner, Mr. Haswell indicated to
10 me that I had left someone off the appearance list, and
11 if there are any --

12 COMMISSIONER CLARK: Are there any changes to the
13 material in the prehearing order preceding the order of
14 witnesses?

15 MR. HASWELL: We would like to add Patrick Floyd
16 to the appearances on behalf of Gulf Coast Electric
17 Cooperative, Inc.

18 COMMISSIONER CLARK: And where should he appear?

19 MR. HASWELL: He would appear on the first page on
20 appearances.

21 COMMISSIONER CLARK: Oh, I'm sorry.

22 MR. STONE: Along those lines, we would ask that
23 Mr. Cresse and his firm affiliation be listed as a
24 Class B practitioner appearing on behalf of Gulf Power
25 Company, and we will provide that information to

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1 Ms. Brown.

2 COMMISSIONER CLARK: Anything else before we start
3 on the order of witnesses? Is there any change or
4 addition to the order of witnesses?

5 MR. HASWELL: Commissioner, the only thing is we
6 promised Ms. Brown that we would give her the issue
7 numbers for Mr. Dykes, Mr. Gordon and Mr. Parish by
8 Friday.

9 COMMISSIONER CLARK: All right.

10 MR. STONE: Commissioner Clark, with regard to the
11 rebuttal witnesses, we have received your procedural
12 order this morning. I believe that the witness that we
13 will be offering up in rebuttal will be Mr. Russell
14 Klepper, and we would ask that his name be listed in
15 the order under rebuttal. I guess that would be on
16 Page 5. I have not had a chance to fully review the
17 order and have not had a chance to share that with
18 co-counsel that are back in Pensacola. It may be that
19 there will be another witness.

20 COMMISSIONER CLARK: Mr. Russell --

21 MR. STONE: Klepper, K-L-E-P-P-E-R.

22 COMMISSIONER CLARK: Okay. We'll list him as a
23 rebuttal witness. If that changes, let us know. When
24 will we issue the prehearing order?

25 MS. BROWN: Commissioner, I forgot to bring the

1 CASR with me, but I would suspect that we can issue it
2 fairly soon, either the 10th or 11th. It's scheduled
3 to be issued the 17th, but I think we can issue it
4 sooner than that.

5 COMMISSIONER CLARK: Mr. Stone, when can you let
6 the Staff know who the rebuttal -- well, certainly by
7 the 10th you will know?

8 MR. STONE: I was going to suggest that perhaps
9 the 10th would be sufficient time.

10 MS. BROWN: That's fine.

11 COMMISSIONER CLARK: Okay. Are there any changes
12 to the basic positions shown in the prehearing order?

13 MR. HASWELL: None for Gulf Coast.

14 MR. STONE: No, the basic position as stated for
15 Gulf is correct.

16 COMMISSIONER CLARK: Any changes to Issue 1?

17 MS. BROWN: Commissioner, if I might just
18 interject for a minute. Staff has said that it has no
19 basic position at this time, and there are several
20 issues that we have not taken positions on that we
21 probably will not be able to take positions on until we
22 have listened to the evidence in the case. I just
23 wanted to inform the parties of that.

24 MR. HASWELL: Commissioner, if I can just jump
25 back for a minute. We would hope that the designation

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1 and the filing of their direct testimony of their
2 rebuttal witness would allow us sufficient time to take
3 their deposition, or take Mr. Klepper's deposition
4 prior to the hearing.

5 COMMISSIONER CLARK: The rebuttal testimony is
6 scheduled to be filed October 10th.

7 MR. STONE: I didn't hear the full part of
8 Mr. Haswell's question.

9 COMMISSIONER CLARK: Mr. Haswell has indicated he
10 might want to take the deposition of Mr. Klepper.

11 MR. STONE: And we will endeavor to make him
12 available during the week of October 10th.

13 COMMISSIONER CLARK: Any changes to Issue 1?

14 MR. HASWELL: Gulf Coast would add another
15 sentence to that. Its position, that would state that
16 Gulf Coast's position is that south Washington County
17 and Bay County should be included in the disputed area.

18 MR. STONE: I presume you're stating that all of
19 Bay County is included in the disputed area?

20 MR. HASWELL: Outside the municipal boundaries of
21 Panama City.

22 MR. STONE: Commissioner Clark, that brings us to
23 our basic concern with the way this issue is phrased.
24 Our testimony, which was our direct testimony which was
25 filed based on our complaint or petition in this case,

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1 relates to what we have described and what we have
2 complained about as the disputed area, which is the
3 prison site. It seems as though what Gulf Coast is
4 proposing to do is broaden the disputed area far beyond
5 the scope of the direct testimony that has been filed
6 in this proceeding. We think that it is appropriate to
7 go ahead with this proceeding at least as to the more
8 limited disputed area. And if based on the hearing you
9 find that the area should be broadened -- that a second
10 phase should be allowed, then we would file testimony
11 in response to such second phase. We do not think it
12 is appropriate to broaden the scope of the hearing
13 itself that's scheduled for October 19th and 20th of
14 this month to include all of south Washington County
15 and all of Bay County outside the municipal limits,
16 given the fact that there has been no direct testimony
17 filed in that regard.

18 MR. HASWELL: Commissioner, this is basically a
19 statement of issues and positions, and that's Gulf
20 Coast's position. I appreciate Mr. Stone and Gulf
21 Power's assertion that that's not the way the issue
22 should be defined. They have defined it the way they
23 want and that's one of the issues at the hearing.
24 Because of conferences we have had with Staff, and what
25 we think is a discussion of the issues both in south

1 Washington and in Bay Counties, and direct testimony
2 filed by Mr. Gordon, including his exhibits, that it is
3 appropriate for us to take that position. That is not
4 -- we are not telling you right here by adopting or by
5 changing or adding to our position, that that's the
6 issue in the case. That's just our position of what
7 the issue is. It seems to me that's what would be
8 determined at the hearing.

9 MS. BROWN: Commissioner, Staff's position on this
10 is that the issue the way it is worded is appropriate,
11 and that it is appropriate for the Commission to
12 resolve this with respect to the evidence and the facts
13 that are adduced at hearing. And at that time, then
14 the Commission itself can decide what is the area in
15 dispute. It is Staff's position that when we get to a
16 territorial dispute that involves one particular area,
17 but there is indication through maps or other evidence
18 that is filed that there are other areas in dispute
19 with respect to the utilities involved, it does not
20 make any kind of sense to avoid, at least to some
21 extent, addressing those areas in the matter at hand.
22 How the Commission would treat its determination of
23 what the disputed area is, is actually also an issue in
24 the case; what should be done. As Mr. Stone suggested,
25 there are several options that the Commission could

1 take if it decided there were other areas in dispute.
2 But that it seems to me should be left for the hearing
3 and for the Commission's decision. It doesn't seem to
4 me to be reasonable to limit the Commission from
5 deciding this factual issue.

6 COMMISSIONER CLARK: I'm going to allow the
7 position to stand. Issue Number 2?

8 MR. HASWELL: No change for Gulf Coast.

9 MR. STONE: Commissioner, by following the
10 approach of incorporating another document, it is
11 uncertain to us what their position is on this issue.
12 It appears to us that there ought to be a stipulation
13 on this issue, but we can't determine that from the
14 position that Gulf Coast has taken.

15 MS. BROWN: Commissioner, that bothered Staff a
16 little bit also, that Gulf Coast's answers to Staff's
17 request for production of documents are not and may not
18 be evidence in the hearing. It is pretty difficult to
19 figure out what Gulf Coast is really saying, and I
20 would suggest that perhaps they could just change that
21 and give the information that's included in there and
22 that would be more helpful to the Commissioners.

23 COMMISSIONER CLARK: I agree, Mr. Haswell.

24 MR. HASWELL: We would be happy to incorporate --
25 what we referred to, we will incorporate that in a

1 narrative for the order.

2 COMMISSIONER CLARK: Good. And if it looks like
3 you agree with Gulf Power, maybe we can stipulate the
4 issue.

5 MR. HASWELL: Yes, ma'am.

6 COMMISSIONER CLARK: Thank you. When will you get
7 that done?

8 MS. BROWN: No later than the 10th. I think the
9 10th was the time that --

10 MR. HASWELL: Yes, ma'am.

11 COMMISSIONER CLARK: Issue 3.

12 MR. HASWELL: There is no change to Gulf Coast's
13 position.

14 MR. STONE: No change to Gulf's position.

15 COMMISSIONER CLARK: Issue 4.

16 MR. HASWELL: There is no change to Gulf Coast's
17 position, but if you would prefer us, instead of
18 referring to our answers to interrogatories to
19 actually --

20 COMMISSIONER CLARK: Yes, sir.

21 MR. HASWELL: -- we will do that, too.

22 COMMISSIONER CLARK: Thank you.

23 MR. STONE: No change to Gulf's position.

24 COMMISSIONER CLARK: Issue 5.

25 MR. HASWELL: No change to Gulf Coast's position.

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1 MR. STONE: There is no change to Gulf's position,
2 either.

3 COMMISSIONER CLARK: All right. Issue 6.

4 MR. HASWELL: Commissioner, I think this is one
5 issue that we could stipulate to, by simply answering
6 the question yes. As a matter of fact --

7 COMMISSIONER CLARK: Can we show that as a
8 stipulated issue?

9 MR. STONE: Yes, Commissioner, as far as Gulf is
10 concerned.

11 MS. BROWN: Commissioner, we can, but we would
12 like to direct your attention to Issue 7.

13 COMMISSIONER CLARK: Yes. And I think also, I
14 mean --

15 MR. HASWELL: We think Issue 7 should be deleted.

16 COMMISSIONER CLARK: Mr. Stone.

17 MR. STONE: Commissioner, we believe that Issue 7
18 is relevant. We would simply like to rephrase our
19 position so that it does not incorporate the position
20 on a stipulated issue, but we think that it is a
21 relevant proceeding in terms of comparison of the two
22 utilities and who is best able to serve the load in the
23 disputed area.

24 MS. BROWN: Commissioner, Staff's position is
25 probably we don't need both of these issues. We can

1 either have one or the other, and we are not really
2 married to either one. It just seemed sort of a waste
3 of time to do both.

4 COMMISSIONER CLARK: What is your position? I
5 mean, obviously, you think you can provide better
6 service, more reliable service.

7 MR. STONE: The issue is, the scope of the
8 facilities in the area, the type of service that would
9 be provided by each utility, a relative comparison of
10 the types of services. It is a comparison of a radial
11 feed to a dual source feed in terms of the effect of
12 relative reliability to that particular site. Those
13 are issues that are brought squarely to focus in the
14 testimony that has been filed, and this is the issue
15 that it addresses.

16 MR. HASWELL: We can get into an argument over who
17 is the most, most, most reliable on one incremental
18 business. In fact, Gulf Coast's position at this
19 hearing is going to be, if that continues to be an
20 issue, is that it can provide the most reliable service
21 depending on those same characteristics that Mr. Stone
22 alleges. It's going to be an argument amongst
23 engineers. And I think that the Commission's
24 jurisdiction or consideration of criteria should be,
25 can both of these utilities provide adequate and

1 reliable service. I don't think the requirement is
2 that which one can provide the most reliable service.
3 If they both can provide adequate and reliable service,
4 that should be the end of it. Or the end of that
5 issue.

6 MR. STONE: We don't believe the issue is bare
7 minimums. We believe it's who has the resources to
8 provide the best quality of service.

9 MR. HASWELL: My understanding of adequate and
10 reliable would be prudent utility practice, which I
11 would assume is a reasonable standard. I would suggest
12 if we can't stipulate to them, we might as well just
13 leave them in.

14 COMMISSIONER CLARK: Well, I think there should be
15 one issue; is each utility capable of providing
16 adequate and reliable electric service? And I would
17 suggest they just be moved into one issue, and it won't
18 be a stipulated issue.

19 MR. HASWELL: Shall we cross out Number 7?

20 COMMISSIONER CLARK: Yes. And then I think each
21 parties' position, with respect to Issue 6, can be yes,
22 but then you can explain that you believe the service
23 you provide is more reliable. And, therefore, I assume
24 your argument is because you can provide a better
25 quality of service, you should be chosen.

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1 MR. STONE: (Indicating yes.)
2 MS. BROWN: With that change, Commissioner, Staff
3 will take no position at this time on that issue.
4 COMMISSIONER CLARK: Okay. Issue 8.
5 MR. HASWELL: No change to Gulf Coast.
6 MR. STONE: I have no change for Gulf.
7 COMMISSIONER CLARK: Issue 9.
8 MR. HASWELL: No change.
9 COMMISSIONER CLARK: Issue 10.
10 MR. HASWELL: No change.
11 MR. STONE: No change.
12 COMMISSIONER CLARK: Issue 11.
13 MR. HASWELL: No change.
14 MR. CRESSE: Commissioner, I think on Issue 11 we
15 would like to add at the bottom of Gulf's position,
16 "Gulf believes the Department of Corrections would
17 prefer service from the lowest cost provider."
18 MR. HASWELL: The only problem I have with that,
19 Commissioner, is nobody from the Department of
20 Corrections is on their witness list.
21 COMMISSIONER CLARK: That is a problem, but I
22 don't think it's yours. Issue 12.
23 MR. HASWELL: No change.
24 MS. BROWN: Commissioner, if we may go back just
25 for a minute. Ms. Bass has pointed out something to me

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1 that I think needs to be fixed. On Issue 9, the
2 wording of the issue is what would be the effect on
3 each utility's ratepayers if it were not permitted to
4 serve the existing facility. That should be the
5 correctional facility.

6 COMMISSIONER CLARK: Okay. I had taken it to mean
7 that.

8 MR. STONE: I apologize. I'm told that we are
9 okay with that, even though I didn't understand it.

10 COMMISSIONER CLARK: On Issue 9, we are talking
11 about the --

12 MR. STONE: Yes, I understand.

13 COMMISSIONER CLARK: -- corrections facility?

14 MR. STONE: Yes.

15 COMMISSIONER CLARK: Issue 12.

16 MR. HASWELL: No change.

17 COMMISSIONER CLARK: Mr. Stone.

18 MR. STONE: (Indicating no.)

19 COMMISSIONER CLARK: Issue 13.

20 MR. HASWELL: No change.

21 MR. STONE: Commissioner, in light of the ruling
22 on the procedural order, I believe we have a
23 stipulation on this issue, on Issue 13, and it can be
24 simply stipulated, no, there is no territorial
25 agreement and there is no need to have the additional

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1 verbiage.

2 MS. BROWN: Staff agrees with that, Commissioner.

3 MR. HASWELL: We have no problem with that.

4 COMMISSIONER CLARK: Okay. We will show Issue 13
5 deleted. Issue 14.

6 MR. HASWELL: No change to Gulf Coast's position.

7 MS. BROWN: Commissioner, I'm sorry, did you say
8 that that would be deleted?

9 COMMISSIONER CLARK: Well, I'm sorry. Does it
10 have to be identified as an issue that's stipulated? I
11 mean, is it important to address that?

12 MS. BROWN: No, not really. Either one is fine
13 with Staff, whatever the parties prefer.

14 MR. HASWELL: Other than, Commissioner, to have
15 something in the record that says these parties don't
16 have a territorial agreement.

17 COMMISSIONER CLARK: Why don't we move it to a
18 stipulation that the parties agree there is no formal
19 territorial agreement that covers the disputed area.

20 MS. BROWN: All right.

21 COMMISSIONER CLARK: That would indicate to the
22 other Commissioners that we have looked at it.
23 Issue 14.

24 MR. HASWELL: No change.

25 MR. STONE: No change.

1 COMMISSIONER CLARK: And Issue 15.

2 MR. STONE: Commissioner, I never have known how
3 to deal with Issue 15, since we never know what is
4 going to happen until the Commission vote. But based
5 on how we think the Commission ought to rule, the
6 docket ought to be closed.

7 MR. HASWELL: I always thought that was a curious
8 issue. I would say not until it is resolved.

9 COMMISSIONER CLARK: Now, with respect to the
10 legal issues. I have looked over them and I'm inclined
11 to believe that we should delete, based on Staff's
12 recommendation, to eliminate this because it is
13 incorporated in the first issue.

14 MR. HASWELL: We have no objection.

15 COMMISSIONER CLARK: Okay.

16 MS. BROWN: Commissioner, Staff isn't really
17 enthusiastic about including Issue 2(A) or 3(A),
18 either, although we did --

19 COMMISSIONER CLARK: Well, I did have a note to
20 myself, isn't 2(A) already covered. And it seemed to
21 me that at least in a position Gulf Coast took with
22 respect to one issue, and let me just see if I can find
23 it.

24 MS. BROWN: Commissioner, the problem that Staff
25 has with all of these legal issues is that they have

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1 already been fairly clearly decided in previous cases.
2 Issue 2(A), should rates of utilities be determinative
3 -- that is fairly well understood that, no, they should
4 not be determinative. And, likewise, it's fairly clear
5 from Chapter 366 itself, from the language there, and
6 also in our rules, territorial rules, that the
7 Commission is not limited to the statutory criteria
8 identified in 366 or the rules, but can, in fact,
9 consider all other relevant matters that it deems
10 appropriate. These are all things that have been
11 fairly well determined before, we are just plowing the
12 same ground. I think that the parties could address it
13 if it comes up somehow.

14 COMMISSIONER CLARK: Well, it does come up in
15 Issue 10. It says, "Which party is capable of
16 providing electric service to the correctional facility
17 site at the lowest rate?" And there is apparent
18 agreement that currently Gulf Power has the lowest
19 rate, but Gulf Coast points out that situation can
20 change. I just think that -- it seems to me it's
21 covered in Issue 10, or in the responses to Issue 10.

22 MR. HASWELL: Of course, Issue 10, though, those
23 are factual issues and these are the legal issues. We
24 have no objection to deleting these legal issues as
25 long as everybody understands that they are either

1 subsumed or can be argued in connection with any of the
2 factual issues that are addressed.

3 MR. STONE: Commissioner, I think it's always
4 appropriate to include discussion of the legal
5 standards within briefs on the issues, on the facts. I
6 don't think we need to have specific legal issues
7 addressing that.

8 MS. BROWN: Staff agrees with that.

9 COMMISSIONER CLARK: How about if we delete the
10 issue, but then your position on the legal issue could
11 be added to your position under 10?

12 MR. HASWELL: Yes, ma'am, that's fine with us.

13 COMMISSIONER CLARK: Okay. I didn't have any
14 notes with respect to 3(A), but I would agree it seems
15 like we are plowing the same ground. But I don't have
16 an objection to leaving it in there.

17 MR. STONE: Commissioner, I think, again, it's
18 something that can be addressed in the briefs if it
19 becomes important. I don't know that there is any real
20 dispute between the parties that the Commission follows
21 the Commission rules and the statute, and that those
22 statutes provide the criteria. And they say in
23 addition to. I mean, on the face of those terms --

24 COMMISSIONER CLARK: It's including but not
25 limited to?

128-AA

1 MS. BROWN: Yes. Perhaps we could stipulate the
2 legal issue.

3 MR. HASWELL: That would be fine with me.

4 MR. STONE: Well, I think it is more appropriate
5 that if it becomes relevant to someone's argument in
6 the brief, that they can state the legal issue there.
7 I don't think it needs to be stated within the body of
8 the prehearing order. The law is what the law is.

9 COMMISSIONER CLARK: I have a suggestion. How
10 about if -- I don't know who -- oh, Gulf Coast
11 requested this legal issue. Maybe it would be
12 appropriate just to simply add your position on this to
13 your basic position.

14 MR. STONE: Okay. That's no problem.

15 COMMISSIONER CLARK: And I would likewise give
16 Gulf Power the opportunity if they felt they needed to
17 address that to do it in your basic position.

18 MR. STONE: Thank you.

19 MS. BROWN: Commissioner, then we will delete
20 these three legal issues.

21 COMMISSIONER CLARK: Yes. Do I have anything else
22 I have to take up in this prehearing?

23 MR. CRESSE: Commissioner?

24 MS. BROWN: The exhibit list, in case there are
25 any changes to that.

128-BB

1 COMMISSIONER CLARK: I'm sorry. Are there any
2 changes to the exhibit list?

3 MR. HASWELL: We have no changes at this time.

4 MR. STONE: Commissioner, we don't have any
5 changes at this time. It may be that there may be some
6 exhibits identified with our rebuttal testimony, and,
7 so, we will provide that by the 10th.

8 COMMISSIONER CLARK: I have taken care of the
9 pending motions that are ripe for determination?

10 MS. BROWN: Yes. If you would like, Commissioner,
11 I can include a sentence on the outstanding discovery
12 motion that the parties will get back to us on the
13 status of that by the 10th.

14 COMMISSIONER CLARK: Well --

15 MR. STONE: It may be resolved by the time you
16 issue the prehearing order.

17 COMMISSIONER CLARK: Yes. And I was going to
18 say --

19 MS. BROWN: Okay. We will wait and see.

20 COMMISSIONER CLARK: Okay. Mr. Cresse.

21 MR. CRESSE: In view of the comment a moment ago
22 by Mr. Haswell, if we are unable to reach agreement on
23 putting the deposition of a Department of Corrections
24 employee into the record, we may have to call a
25 Department of Corrections employee to testify. I would

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1 hope we would be able to reach agreement at the
2 deposition that the Department would be acceptable in
3 lieu of an appearance by Department employees.

4 COMMISSIONER CLARK: Mr. Haswell.

5 MR. HASWELL: If that works both ways. If we want
6 to submit a deposition of another witness who has not
7 been identified yet, we would like that same right.

8 COMMISSIONER CLARK: Mr. Stone and Mr. Cresse.

9 MR. CRESSE: Commissioner, we can identify the
10 witness that we are going to take a deposition of. I
11 believe Mr. Haswell has already been notified of his
12 deposition that is to be taken on October the 7th,
13 which happens to coincide with my birthday.

14 MR. HASWELL: Well, I believe we got the
15 Kronenberger deposition notice yesterday or the day
16 before.

17 MR. STONE: Well, we have been working on it for a
18 week to get the timing. There is no surprise that we
19 were planning to take Mr. Kronenberger's deposition,
20 and we were trying to settle on a date. If they only
21 received the notice yesterday or the day before,
22 certainly an agreement was reached on the date last
23 week.

24 MR. HASWELL: Notifying us of a deposition does
25 not mean that they intend on or they are going to --

128-DD

1 that's notice to us they are going to add an additional
2 party. Now, again, if they want --

3 COMMISSIONER CLARK: An additional witness.

4 MR. HASWELL: An additional witness, excuse me.

5 COMMISSIONER CLARK: Mr. Stone, I think Mr.
6 Haswell makes a good point. This is an issue just
7 brought up now. The time for you all filing your
8 direct testimony is past. However, I think it is
9 important to have some indication of what a potential
10 customer may prefer, but I will likewise give the
11 opportunity to Mr. Haswell to possibly call another
12 witness.

13 MR. STONE: If it relates to Issue 11, which is
14 the witness we are offering, then I understand.

15 COMMISSIONER CLARK: That would be the limitation.

16 MS. BROWN: Commissioner, if I might mention that
17 time is short and discovery seems to be still
18 proceeding apace and all of this needs to be resolved.

19 COMMISSIONER CLARK: Let me just state my
20 understanding of the request. You have indicated that
21 you may want to take the deposition, or you have
22 scheduled the deposition of a Department of Corrections
23 employee. The scheduling of a deposition doesn't
24 necessarily indicate you would call him as a witness,
25 and for you to have done that, it seems to me it should

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1 have been done earlier than this point.

2 MR. STONE: Commissioner, and I agree that he has
3 not been filed as a witness. But the issue is, what is
4 the customer preference for electric service, and
5 that's Issue 11. The customer is not a party to this
6 proceeding. No one has provided testimony on behalf of
7 the customer. The customer has not been given an
8 opportunity to provide testimony on his own behalf.

9 COMMISSIONER CLARK: Well, I think you should have
10 anticipated that.

11 MR. STONE: We have scheduled his deposition in an
12 effort to provide that information to the Commission.

13 COMMISSIONER CLARK: Well, I'm going to allow you
14 the opportunity to add another witness on that point,
15 but I will also allow you the opportunity to add
16 another witness on that point.

17 MR. HASWELL: We are considering taking the
18 deposition of Mr. Vic Jones and Mr. Daugherty
19 (phonetic), and they would be addressing other issues
20 in here, too. We are planning on taking those
21 depositions, we were not planning on adding them as a
22 witness. But if we can file their depositions --

23 COMMISSIONER CLARK: No, the extent to which I
24 will allow additional witness testimony will be limited
25 to Issue 11, that's customer preference.

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1 MR. HASWELL: Well, I guess, Commissioner, I don't
2 understand. Obviously, if that is your order we will
3 comply with it, but the problem I have with it is, what
4 is the rationale for saying they can pop a witness on
5 us at the last couple of minutes, and if we are going
6 to agree to let them do that, then it seems to me it
7 should work the other way, another way. They got to
8 pick the issue that they are going to put a witness on.
9 We have two other witnesses that we want to depose, and
10 if --

11 COMMISSIONER CLARK: Well, let me ask you this,
12 what information do you intend to get and does it
13 change any of your positions?

14 MR. HASWELL: I think it will help identify --
15 will provide the factual basis, give the Commission
16 more information for deciding the issues.

17 COMMISSIONER CLARK: Well, I only have --

18 MR. HASWELL: I haven't heard that they were going
19 to do this until just a few minutes ago. I'm not
20 prepared to identify every issue that we would be
21 addressing, but --

22 COMMISSIONER CLARK: I only have before me the
23 request on this one item, and I'm going to limit my
24 ruling to that. If you feel you are justified in
25 making an additional request, you can do so by motion.

1 MS. BROWN: Commissioner, I would mention that the
2 magic date of the 10th, though --

3 COMMISSIONER CLARK: Absolutely.

4 MS. BROWN: -- to try to resolve some of these
5 things.

6 COMMISSIONER CLARK: It seems to me that the
7 longer this drags on, the less willing the Commission
8 is to allow late information.

9 MR. STONE: Commissioner, Mr. Cresse's initial
10 request was that we entertain the possibility of
11 submitting the Department of Correction's employee's
12 deposition as an exhibit in the case rather than having
13 to call a live witness.

14 COMMISSIONER CLARK: That is an agreement you can
15 reach with Mr. Haswell. I'm not going to rule on that
16 point.

17 MR. STONE: I understand.

18 COMMISSIONER CLARK: They are not automatically
19 put in the record.

20 MR. STONE: I understand.

21 COMMISSIONER CLARK: Okay.

22 MS. BROWN: I don't think there is anything
23 further, Commissioner, unless the parties have
24 something.

25 COMMISSIONER CLARK: If not, the hearing is

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adjourned. Thank you.

(The prehearing concluded at 10:35 a.m.)

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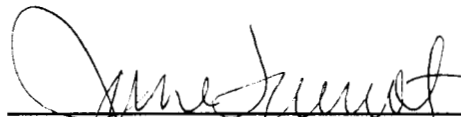
CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages numbered 1 through 34 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 7th day of October, 1994.



JANE FAUROT
100 Salem Court
Tallahassee, Florida 32301
(904) 878-2221

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 7th day of OCTOBER, 1994, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,

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STATE OF FLORIDA, BY THE ABOVE PERSON WHO IS PERSONALLY
KNOWN BY ME.



Melanie Y. Strubble

NOTARY PUBLIC
STATE OF FLORIDA

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