

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Resolve) DOCKET NO.: 930885-EU
Territorial Dispute With Gulf)
Coast Electric Cooperative) Filed: November 22, 1994
Inc. by Gulf Power Company)

POST HEARING BRIEF OF GULF COAST ELECTRIC COOPERATIVE, INC.

Gulf Coast Electric Cooperative, Inc., in compliance with the Order Establishing Procedure (Order No. PSC-93-1830-PC0-EU) issued on December 27, 1993, files herewith its Post-Hearing Brief. Attached to this brief is the required Post-Hearing Statement. In this brief, the references to the transcript will be shown as T-51/7, for example, meaning page 51 of the transcript at line 7. When the identity of a witness is appropriate, his name will appear with the cite, e.g., (Norris, T-289/10).

PART I

INTRODUCTION: SUMMARY OF ARGUMENT

This case is as much a matter of factual issues as equitable ones, and is not as complicated as the number of exhibits and amount of testimony might indicate. Gulf Coast Electric Cooperative, Inc. (Gulf Coast) took an active and decisive part in helping local government locate a much needed economic development project in South Washington County - the correctional facility in issue. Electric service to that facility will also help Gulf Coast achieve its long term-goal of providing lower cost electricity to its members, who over the years have incurred the cost of developing and maintaining

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distribution service in low density, high cost rural areas of Washington County. Gulf Power Company (Gulf Power) on the other hand, sat back and let Gulf Coast secure the facility for the County, spend the money to relocate its distribution facilities which were in the way, and provide a grant to the County. Only after the location of the correctional facility was a certainty did Gulf Power indicate it wanted to serve the site, and then demanded the jurisdictional right to serve it - and that "right" is based on a massive duplication of Gulf Coast's existing facilities by Gulf Power in 1971. Not only should he who is silent when he should speak be not heard to speak when he should be silent, but also he who complains of an alleged wrong shall not be heard when he complains with unclean hands. These are ancient and timeless equitable principles.

By 1950, Gulf Coast Electric Cooperative, Inc. (Gulf Coast) was serving electric customers (Members) in South Washington County, at, and near the intersection of County Road 279 and State Road 77 which is now adjacent to the site of the new Washington County Correctional Institute, and part of the disputed area. No one else was there. (Norris, T-291/7-13; T-299/10; T-300/9) Gulf Power claims to have commenced service to Washington County in 1926 (Weintritt, T-68/15) and although Weintritt could say when Gulf Power started to serve in Washington County, he would not explain why Gulf Coast was serving in the same county, nor why Gulf

Power was not serving all customers in Washington County. (T-91/16). In 1971 Gulf Coast had distribution facilities on and adjacent to the area of the Correctional Institute, when Deltona Corporation began its development of Sunny Hills. (T-300/19-24) For whatever reason, Deltona requested service from Gulf Power, even though Gulf Power had no distribution service in the area, but Gulf Coast did have service along Highway 77 adjacent to the Sunny Hills site and going on up to Wausau (Exhibit 9). Over Gulf Coast's objection and prior to the time that the Florida Public Service Commission (Commission) had jurisdiction over territorial disputes involving cooperatives and municipalities, Gulf Power built a new three-phase line from Vernon, down 279 and up 77, crossing the Cooperative's lines at least 18 times (see Exhibit 9). The Circuit Court in the ensuing litigation denied the Cooperative's Petition for Injunctive Relief and allowed the customer, Deltona, to choose the utility provider. (Norris, T-301/1-17). Soon after Gulf Power built the new line which intruded in and across the Cooperative's facilities and service area for over ten miles (see Exhibit 8 and 9), Gulf Power installed a substation at Sunny Hills at a rated capacity of 24,640 kV, (Norris, T-301/19-22) even though the Cooperative's Crystal Lake Substation was only 5.5 miles South of the intersection of 279 and 77. Gulf Power succeeded in duplicating the existing Cooperative facilities at a cost that now is at least \$3,314,000.00 within a five-mile radius and

\$3,146,000.00 for just Sunny Hills, (Weintritt, T-106/6-7, T-110/17) as compared with the Cooperative's total investment in the area of \$1,233,475.00. (Exhibit 40, Items 16a & 16c)

Later, in the same general area, in 1984, Gulf Power built new facilities in an attempt to serve Leisure Lakes, an area shown on Exhibit 14 (HN-4). This time the Commission had jurisdiction to stop the intrusion by Gulf Power into an area already served by Gulf Coast, and the Commission prohibited Gulf Power from serving Leisure Lakes and prohibited Gulf Power from serving any retail customers along the route of the facilities built to serve Leisure Lakes, or along the route by which those facilities would be connected to Gulf Power's transmission system, which was the connection to Gulf Power's three-phase line at the intersection of State Road 77 and County Road 279. As admitted by Mr. Weintritt for Gulf Power, its line on 77 down south of the intersection of 279 and 77 still exists, but is not energized (T-159).

These two utilities have had numerous disputes in Washington County, and some have been brought to the Commission and some have not. It is obvious from the location of the facilities of the two utilities that disputes will continue. (See Exhibit 6, (AWG-6 & 7); Exhibit 17, (WSD-1 & 2); and Exhibit (HN-4)). In the past several years, rural economic development has been promoted, not only by the State but also by Federal policy, and indeed, Gulf Power has participated itself in grants, loans, and other assistance in

encouraging and promoting economic development in its service area (Weintritt, T-146; Hodges, T-616, Exhibit 36).

Gulf Power claims that John Daugherty worked for over a year to get the prison located in Washington County (Hodges, T-605/5). Although Gulf Power denies its construction work in Vernon and its construction down 279 and 77 have anything to do with the prison, it is obviously consistent that Gulf Power began planning for major upgrades to its Vernon Substation and facilities that would serve the correctional facility and allow Gulf Power to claim dual feed capability. Weintritt argued that the upgrades were not part of the planning process for the prison, (Weintritt, T-116/6), but could not point to any other load in the area that required these upgrades. The total cost of the upgrades by Gulf Power amounted to \$55,503.00 as shown on Gordon's Exhibit No. 10. As Mr. Gordon noted, adding regulators to the line on 279 had to be for the purpose of upgrading service downstream from the point where those facilities were installed (Gordon, T-227/24). The line itself only goes down 279 to the prison site and then up to Sunny Hills. Why make this upgrade if you are not planning on a new load? Gulf Power was already planning on serving this new load, and that helps explain its posture of letting Gulf Coast front the cost of helping the citizens of Washington County get the prison site located in Washington County in the first place.

By April of 1993, Gulf Coast became aware that the

Department of Corrections was planning on locating a prison in West Florida and was considering sites in several counties, including Washington County (Norris, T-303-T304; Exhibit 16). Gulf Coast has previously assisted in the location of prison sites for economic development in Gulf County and Gulf Coast's members approved a \$45,000.00 grant to Gulf County so it could acquire land for the Department of Corrections. (Norris, T-296/3-25)

All of the proceedings in Washington County were public (T-305/23), and both Gulf Power and Gulf Coast were aware that Washington County desired to secure a location for the prison for the benefit of the citizens of Washington County. Because of the timing and necessity to move fast on the acquisition, Gulf Coast made a public proposal to the Washington County Commission for a \$45,000.00 grant and assistance in securing a loan of \$300,000.00 to acquire the property in April, 1993. (Norris, T-304, Exhibit 16) Gulf Power did not make any similar proposal, although one of Gulf Power's own employees, Mr. Daugherty, thought Gulf Power should do so. (Hodges, T-613, T-614; T-619/20) Even though the Gulf Coast offer was public record, and even though Gulf Power claims that Mr. Daugherty was on top of the situation (T-605/5), at no time did Gulf Power advise or warn the Department of Corrections, the Washington County Commission, or Gulf Coast Electric Cooperative that it would dispute service by Gulf Coast, until July 30, 1993, when Gulf Power representatives met with the

Department of Corrections in Tallahassee (Hodges, T-634). In fact, Gulf Power deliberately refrained from raising any objection until the grant and loan were in place, the site had been selected and secured (see Hodges, T-633/9-14; T-640/19-21), and then only after Gulf Coast relocated its existing Red Sapp Road line to Highway 279 did Gulf Power file this proceeding. Gulf Power claims that it would not enter into a "bidding contest" (T-599/16) but, nowhere in the record is there any evidence that Gulf Coast, the Washington County Commission, or the Department of Corrections asked for or suggested that there would be a bidding war. Gulf Power, at least 60 days after learning that the Department of Corrections had selected Gulf Coast, sent a delegation to Tallahassee to see Mr. Kronenberger on July 30, 1993. (T-634, T-55) Although Gulf Power witness, Hodges claims that all they were doing was to let the Department of Corrections know that Gulf Power was willing to serve the site and wanted to "earn the business", Mr. Kronenberger made it clear that what Gulf Power was telling him was that Gulf Power had a jurisdictional right to serve the site (T-55/12). Rather than a friendly business meeting where a supplier is trying to convince a customer to use his service, Gulf Power was telling the Department of Corrections that it had no choice, it had to select Gulf Power. Gulf Power planned all along to bring this issue to the Commission, but kept quiet until it was certain the prison would be located in South Washington County. The

offer, including the service by Gulf Coast, was public record. Gulf Power knew or should have known what the offer was. Knowing that Gulf Coast expected and planned on providing the service, Gulf Power none-the-less did nothing to oppose the offer or to suggest an alternative until it filed its petition with the Commission.

After being selected as the service provider by the Washington County Commission and the Department of Corrections, Gulf Coast constructed new facilities on County Road 279 as shown on Exhibit 17. The cost to the Cooperative totalled \$51,579.00. The Cooperative allocated \$14,582.00 of that cost to the relocation expense because its existing single-phase line on Red Sapp Road was in the way of the Department of Corrections project. Gulf Coast had facilities on the site of the correctional facility itself, and had those facilities in place since 1950 (T-212/21, Exhibit 9). The Red Sapp Road line connected service from the Cooperative's three-phase line on State Road 77 to its 100 plus customers on County Road 279. Gulf Power had no service, and no prior historic service, on the site of the correctional facility, although witness, Weintritt attempted to claim that Gulf Power's service to a traffic signal may have been on the site (T-129/11-17). In order to continue to provide service to its customers on 279 in a reliable manner, the Cooperative would have to relocate its Red Sapp Road line, no matter who provided service. The difference is that Gulf Coast was

willing to absorb the relocation cost if it were to be the power supplier and could amortize those costs over a period of years out of the funds received from the service, but would not absorb those costs if anyone else supplied the power. It is further clear that the Red Sapp Road is not a traditional County road, and indeed, the County claims no interest in the land or the facilities of the Cooperative that constituted the Red Sapp Road line (see Exhibit 14). Consequently, Gulf Power's attempt to show that no one would have been entitled to relocation costs under Florida Statutes Section 337.403 was a feeble attempt to try to establish the Red Sapp Road as a County road right-of-way or a State road right-of-way. There are no facts in evidence to establish that the road is anything other than what Mr. Norris and Mr. Gordon said it was, a graded, sand road with the Cooperative's facilities off of the "graded" right-of-way. (T-267, T-387/24-25, T-388/6) The cost to the Cooperative to relocate the single-phase line from Red Sapp Road to 279 as a single-phase line was \$36,996.00, and the cost to upgrade that single-phase line to three-phase was \$14,582.00. The Cooperative spent no money changing out substation transformers, or adding voltage regulators, or reinsulating any of its off-site facilities. On the other hand, Gulf Power spent \$55,503.00 as shown on Exhibit 10 and explained by Mr. Weintritt. The Cooperative has spent a total of \$106,093.00 for relocation, and on-site construction, and will spend an additional \$17,914.00 to

complete the project. The total costs, therefore, for the Cooperative are estimated to be \$124,007.00, and the total cost for Gulf Power is estimated to be \$129,477.00, again as shown on Exhibit 14. The location of the Gulf Coast single-phase facilities on the site made it less expensive for the Cooperative to provide temporary construction service than if there had been no such facilities on the site. (T-401/8-13) Gulf Power claims that its cost figures for temporary service and permanent service might be cheaper than they estimated, because they might have negotiated a different configuration with the Department of Corrections. Of course, to compare apples to apples, the cost figures provided by both utilities for the temporary and permanent service to the Department of Corrections were based on the same set of instructions from the Department of Corrections.

Gulf Power and Gulf Coast rates are not the same, and as shown by Exhibit 7, for October, 1994, Gulf Power's rate would be \$8,396.38 and Gulf Coast's would be \$7,846.37 with a capital credit discount, and \$8,014.78 without the discount. If we reduce the capital credit allocation to account for the time value of money, that allocation would still be \$290.00, (T-250/21) although the Member's account would none-the-less reflect the full value of \$755.67. Without the capital credit allocation Gulf Coast's bill is \$8,396.38 against \$7,846.37 for Gulf Power, or a difference of \$550.01 per month, an annual difference of \$6,600.12. Discounting the Gulf Coast

bill for the capital credits adjusted for present value (T-250/21), or \$290.00, the Gulf Coast bill is \$8,106.38, difference of \$260.01, or an annual difference of \$3,120.12. No matter how you cut it, Gulf Power's claims of a \$23,000.00 rate differential are simply not credible. Rates can change and in this very proceeding, Gulf Power's rates have gone up from \$7,442.66 to \$7,846.37, an annual difference of \$4,844.52 for this particular facility. Mr. Weintritt agreed that there is no guarantee that anyone's rates will be the same a year later (T-135/19) It remains Gulf Coast's position that rates should not be a factor in any case unless the Commission - which has full-rate jurisdiction over Gulf Power, and rate structure jurisdiction over Gulf Coast - finds that the rates of one utility are unjust and unreasonable.

Gulf Power attempted to make a big issue out of reliability. Of course, the only reason it can claim dual-feed capability is because of its initial duplication of Gulf Coast's lines in 1971, and most recently its \$55,500.00 spent on upgrading its ability to dual-feed at 25 kV. No witness could show that either system could not provide adequate and reliable service to a customer who will have its own back-up generation anyway. In addition, Gulf Power's outage history is 2.52 hours per customer compared to Gulf Coast's 1.66. (Weintritt, T-111/17, Exhibit 41, Item 5, Exhibit 40, Item 19c). So the twin prongs of Gulf Power's claim that rates and reliability should be the basis for awarding this site to Gulf

Power are totally without merit.

Finally, Gulf Coast disagreed with Gulf Coast's witness, Parish that the cost of this load would be less for Gulf Coast than Gulf Power due to diversity on the Gulf Coast and AEC systems. Gulf Power rolled out Mr. Howell and Mr. Pope, who both acted quite indignant that Mr. Parish would suggest that Gulf Power had any cost associated with its IIC contract with the Southern Company, or that there was no diversity for Gulf Power. Notwithstanding Mr. Howell's boisterous comments about a smoke screen (T-563/11), he never was able to deny that Gulf Power will incur a cost associated with the IIC. His only real reason for being at the hearing (He wondered himself why he was there, T-564) appears to be that Gulf Power, by contract only, can defer its IIC costs over a four-year period, i.e., even when it incurs a cost for additional generation it can defer that cost entirely in the first year, then pick up a third the second year and so on. It is interesting to note that Gulf Power made a big issue out of Gulf Coast's capital credit allocation because of the time delay in refunding the funds, but somehow that same point is not to be made for its own costs associated with its pooling contract with the Southern Company.

Gulf Coast should be allowed to continue to serve its historic service area including the site of the correction facility because:

- 1) Gulf Coast initiated service in and on the site on

or before 1950, an area where Gulf Power had no existing facilities, and had none until 21 years later.

2) Gulf Coast's facilities have continued to be maintained and developed from 1950 until 1971, when Gulf Power duplicated Gulf Coast's facilities to capture the service to Sunny Hills.

3) Gulf Coast has shown that its investment to serve its customers in the area is significantly less than Gulf Power's (\$6,229.00 vs. \$1,854.00 per customer).

4) Gulf Coast had facilities on the site itself which would have to be (and have been) relocated to accommodate the Department of Corrections.

5) Gulf Coast's costs to provide service is less than Gulf Power's.

6) Gulf Coast actively pursued economic development for its members and citizens of Washington County by working with Washington County's elected representatives and officials to secure the location of the correction facility. Gulf Power has similar economic development policies, but did not offer assistance to Washington County.

7) Both the Department of Corrections and Washington County expressed a desire to be served by Gulf Coast.

8) Gulf Power should be estopped to complain about service by Gulf Coast, because it was aware of Gulf Coast's activities, its offer, the grant, the loan and Gulf Coast's desire to serve the site, but sat on its hands until after

Gulf Coast relocated its Red Sapp Road line to 279.

9) Gulf Power should be estopped to complain about the crossing of its facilities by Gulf Coast to serve the correctional facility's primary point of service, because Gulf Power itself has crossed the Cooperative's facilities at least 20 times in the immediate area, and indeed, while this proceeding was pending, Gulf Power crossed over the Cooperative's facilities to provide service to a real estate company (T-365, 366).

10) Gulf Power should be estopped to complain about any dollars contributed by Gulf Coast to Washington County or the waiver of relocation costs by Gulf Coast, because Gulf Power does the same thing as far as economic development is concerned by providing loans, grants, and assistance for economic development, and most importantly, the financial assistance was not part of any construction cost to Gulf Coast.

PART II

Issue Number 1: What is the geographical description of the disputed area?:

This is a two-part issue. First, the site of the correctional facility is in a rural area (Weintritt, T-90/16; Dykes, T-404/6-7). There are no outstanding geographical features - the land is basically flat, and the correctional facility is bordered by County Road 279 and State Road 77, as

shown on Exhibits 8, 9 and 17. Secondly, it is Gulf Coast's position that the disputed area includes all of South Washington County and portions of Bay County as shown on Exhibit 6 (AWG 6 & 7), particularly along 279 north to Vernon, along 77 north to Sunny Hills, and to the east of Sunny Hills where Gulf Coast's lines run between Sunny Hills and an extension of Gulf Power's lines farther east (Exhibit 6-AWG-7). In Bay County, the facilities of Gulf Coast and Gulf Power cross several times northeast of Panama City up 231. As Mr. Weintritt noted, there are at least 20 crossings of the two utilities in Washington County alone (Weintritt, T-90/3&9; T-156/15; T-157/18) and areas in Bay County on 231 and east of Callaway (Weintritt, T-156/1-9), are also areas of potential dispute (Norris, T-366/18 to T-372/6; Norris, T-382/9-21). Indeed, while this suit was pending, Gulf Power crossed Gulf Coast lines to serve a realty office (Weintritt, T-192/15 to T-193/16; Norris, T-365/24 to T-366/2). The problem is that Gulf Power claims right to serve anybody west of the Apalacacola River to the State line. (Norris, T-365/5-16; Hodges, T-609/14-25, T-610/1-13), and as Hodges stated, it is Gulf Power's policy and intent to do so. (Hodges, T-610/1-13). Gulf Power also believes that Gulf Coast has fulfilled its purpose (Hodges, T-609/7-8, and 16-18) and with that belief, policy, and intent, future disputes with Gulf Coast are virtually guaranteed. In spite of this company policy, Weintritt opines that the disputed area should only be

the correctional facility site (Weintritt, T-65/23; T-66/20 to T-68/10); and claims there is no useful purpose in expanding the Commission's review of the service areas of the two utilities to avoid future disputes (Weintritt, T-79/6-9). Weintritt tried to claim that there is a "system" for resolving disputes in place (T-68/3), but admitted there really is no "system" (T-89/23-25), and out of the hundreds or so instances Gulf Power claims there has been or could have been a dispute, Weintritt recalls a "couple of times" that Gulf Power discussed the issues with Gulf Coast (T-89/19-20; T-162/9-10). Gulf Coast has attempted to work out solutions to the territorial problems, but has gotten nowhere with Gulf Power (Norris T-366/2-3). Unless the Commission steps in and exercises its jurisdictional grant of authority under 366.04, these two utilities will continue to be embroiled in costly disputes.

Issue Number 2: What is the expected customer load, energy, and population growth in the disputed area?

In South Washington County and Bay County there will obviously be continuing growth in both load and energy, although neither party sponsored testimony on the general growth of load and population. Gulf Coast has 122 customers in the immediate area as shown on Exhibit 17, and Gulf Power has 59 (T-404/18-21). On the site of the correctional facility itself, there will be one customer, the Department of Corrections, and the expected load is 372 KW beginning in

1995. Estimated annual MWH is 2,091.05 in 1995. Gulf Coast has more than adequate capacity to serve the anticipated growth.

Issue Number 3: Which utility has historically served the disputed area:

Gulf Coast has served the area of the correctional site and the surrounding area for more than 44 years, initiating service in 1950 (Gordon, T-212/21; Exhibit 6-AWG-1), and as Exhibit 6(AWG)-1 shows, the very line of Gulf Coast referred to as the Red Sapp line was in place in 1950. The Cooperative built facilities to provide service to people who lived in the area who had no service and were not served by Gulf Power (Gordon, T-211/10-11; Norris, T-291/9-13). As Mr. Norris and Mr. Gordon testified, the Cooperative expanded service in the area of what is now 279 and up 77 towards Wausau (see Exhibits 6, 15 and 41 (Item 1)). It was 21 years later that Gulf Power constructed a three-phase line to capture the service to Sunny Hills, a Deltona project (Norris, T-300/19-24) crossing the Cooperative's lines 18 times to get to Sunny Hills (Gordon, Exhibit 9). Since 1971, Gulf Power has had three-phase service adjacent to the site on 279 and since 1950, the Cooperative has had two-phase and three-phase service adjacent to the site on 77 (Exhibit 9 and 41; Weintritt T-167/7&8). Although Gulf Power suggested that service to a traffic light on 279 might be historical service, Weintritt could make no claim to historical service (T-129/17)

and indeed, Gulf Power's position on this issue clearly indicates that it had no historical service.

Issue Number 4: What is the location, purpose, type and capacity of each utility's facilities existing prior to construction of facilities built specifically to serve the correctional facility?

Gulf Coast had existing single-phase service running across the correctional facility site since 1950, and three-phase service on 77 from its Crystal Lake Substation past the site northerly, adjacent to both the site itself and Sunny Hills towards Wausau. Primary service to the site is out of the Cooperative's Crystal Lake substation with a rating of 7,500 kVA (up to 10,500 kVA), (Gordon, T-218), and is capable of handling 2,500 kV of additional load without improvements to the system (Gordon, T-218). The prison load will not affect the Cooperative's expansion plans in the foreseeable future (Gordon, T-218/20-21). Gulf Power, in 1971, in addition to building a three-phase line on 279, added a substation in Sunny Hills at a rated capacity of 24,640 kVA (Weintritt, T-102/9), and 23 years later, the total load on that substation is 2,263 kV. Gulf Power also has a substation at Vernon with capacity recently added in 1993 of 11,550 kV and a total load 2,870 kV (Weintritt, T-102-103). Weintritt claims that it is careful planning (Weintritt, T-70/11-16), although Gulf Power now has and has had for 23 years the excess capacity to serve more than five times the existing

load in the area. Gulf Power's rate payers are therefore subsidizing this extraordinary investment to serve a few customers.

Issue Number 5: What additional facilities would each party have to construct in order to provide service to the correctional facility?

Neither utility added any generation facilities to serve the correctional facility site. Gulf Coast's existing line on Red Sapp Road was in the way, on the property of the site itself, and to accommodate to Department of Correction's plans, Gulf Coast moved the line to 279 and upgraded it to three-phase service (Dykes, T-398/19 to T-400/9), although Gulf Coast could have provided three-phase service by serving the site from 77 where its existing three-phase service is located (Dykes, T-398/8-11). By removing the Red Sapp Road line Gulf Coast would have cut service to its 100 or so customers up 279, and therefore had to relocate the line to keep that service reliable (Dykes T-399/10). Even though Gulf Coast could have served those customers by a long loop that goes up 279 and then ties in to the Cooperative's three-phase line on 77 farther north, that option was not deemed to be prudent and capable of providing the same quality of service to the Gulf Coast customers, and would in fact degrade their service (Dykes, T-440/19-25 and T-441/1 to T-442/15). From the relocated Red Sapp Road line, Gulf Coast extended service to the site to the Department of Correction's point of service

on the site.

Issue Number 6. Is each utility capable of providing adequate and reliable service to the disputed area?

Both utilities are capable of providing adequate and reliable service. Gulf Power claims it has "more reliable service" capabilities because it can feed the site from either of two substations (Weintritt, T-71/9-19). Gulf Power's claims of superior reliability were challenged by Mr. Parish for Gulf Coast (T-468/20 to T-470), and by Mr. Gordon's Exhibit 6-AWG-2&3 which clearly show that Gulf Coast's Crystal Lake substation can be and has been switched to the Southport substation (Norris, T-383/11 to T-384/4). Gulf Coast's exposure is only about five and one-half miles of line from the Crystal Lake substation to 279 and 77, and the line is on a State highway (77) for easy access by the Cooperative's repair crews. Gulf Power's distribution lines run 7.8 miles from Sunny Hills (Dykes, T-403/11) and 13.64 miles from Vernon (Dykes, T-403/13). In addition, the Sunny Hills line is isolated, not readily accessible, and runs across ponds with poles in the water (Dykes, T-403/17-20). Gulf Power has a manual switch that requires someone to drive out to the switch and physically turn it (Weintritt, T-121/15-19). The Gulf Power personnel would be driving from Chipley or Panama City, a distance of 15 to 20 miles from either direction (Weintritt, T-121/21), but first would have to patrol the lines (Weintritt, T-177/23 to T-178/19), and the amount of lines to

patrol is 13.64 miles from the site to Vernon, or 7.58 miles across land that is hard to reach to Sunny Hills. There is no evidence in the record that showed that Gulf Coast could not repair a fault on its five and one-half miles of easily accessible line just as fast as it would take Gulf Power to first locate, then manually switch its load. Finally, as Mr. Weintritt noted, reliability is a "nebulous term" (Weintritt, T-123/25). So the issue of reliability raised by Gulf Power is really a red herring and is without merit.

Issue Number 7. What would be the cost to each utility to provide electric service to the correctional facility?

While Gulf Power focuses its case on rates and reliability, the cost to serve the site is a factor to be considered, out of all of the factors. In this case, the cost issue is more complicated than when a site is essentially vacant and two utilities are simply at easily defined distances from the site. This case includes legal and equitable issues that should weigh in favor of Gulf Coast. A review of this issue is best begun with an examination of Exhibit 10 and Exhibit 14 by Gulf Coast and Exhibit 38 by Gulf Power.

All of the figures furnished by Gulf Coast in Exhibit 10 are figures in evidence in this case. We should first point out that Exhibit 10 was intended to show all of the Cooperative's cost to serve the site, on site and off site, as incurred as of the date of hearing, and because the figures

are based on the Department of Corrections on-site requirements, they differ from the Cooperative's initial answers to Staff interrogatories and direct testimony. Except for the final \$17,914.00 expense (Exhibit 14, Item 11), and an estimate of \$1,533.28, all of the costs to Gulf Coast are actual costs (Dykes, T-448/5). The Cooperative's relocation cost is consistent with Gulf Coast's initial answer to Staff's second set of interrogatories to Gulf Coast (Exhibit 40, Item 12). Gulf Coast's initial cost to be able to provide service to the Department of Corrections is listed as \$14,582.54 (Dykes, T-400/3) which is the difference between the total cost of constructing the three-phase line on 279 at \$51,579.28, and the cost of constructing a single-phase line on 279 of \$36,996.24 (Exhibit 40, Item 12), without regard to the Department of Corrections on-site requirements. Because Gulf Coast asked Gulf Power to furnish answers to interrogatories based on the actual Department of Correction's requirements (the same requirements imposed on Gulf Coast) Gulf Power asked Gulf Coast the same questions. Exhibit 10 captures the costs that were incurred by Gulf Coast as of the date of the hearing as Mr. Dykes stated (Dykes, T-448/5), with one noted exception of \$1,533.28. On the other hand, the Gulf Power costs on Exhibit 10 are estimates only since Gulf Power was not chosen as the power supplier. The figures used, however, are based on Mr. Weintritt's testimony at pages T-96/11 (\$7,436.00), which is the estimated cost to Gulf Power

to reach the primary metering point (not including metering T-131); T-98/9, \$21,369.00 for temporary service; T-98/14, \$45,169.00 for staff housing; T-99/24, \$9,594.00 for reinsulation; T-100/18-24, \$45,909.00 for regulators. Not included in Gulf Power's costs is the cost of its transformer installed in the Vernon substation. The total cost shown for Gulf Power on Exhibit 10 is \$129,477.00. However, that figure is not reflective of the actual cost Gulf Power would have incurred if it were chosen to be the supplier, because Gulf Power would have incurred a cost of at least \$36,996.74 to relocate Gulf Coast's Red Sapp Road line. So its total would be at least \$166,473.74. Gulf Coast's position is that either the relocation cost shown on Exhibit 10 should not be included as a cost expense for purposes of determining cost to serve, or those costs should be added as a cost to both parties, because any other supplier would have incurred the relocation costs, so that we are comparing apples to apples. Now, Gulf Power has two claims about the relocation costs. First, it claims that it would not pay those costs in the first place (Weintritt, T-655/15 to 25; T-656/1-3); and would not pay those costs even if the Department of Corrections would not locate on the site unless somebody did (Weintritt, T-140/16-19). Secondly, Gulf Power's position is that Gulf Coast is not entitled to relocation costs. This second argument is based on Mr. Cresse's cross-examination of Mr. Norris at T-338-399, yet Gulf Power's own witness (Weintritt) could not

say that the Red Sapp Road was in fact a County road (T-141/18-22), and as Exhibit 14 shows, the Gulf Coast facilities were not on a County right-of-way (see also Gordon, T-267/3-5). Mr. Cresse also attempted to get Mr. Norris to agree that on-site costs would be equal, based on a stipulation coming out of the Leisure Lakes case 10 years earlier! (T-357/23 T-358/5). Even Mr. Weintritt agreed that there might be some advantage to having existing facilities on the site (T-142/24-25). Gulf Power also attempted to pick at Mr. Dykes about the cost figures, and spent a lot of time trying to get Mr. Dykes to speculate on the breakdown of costs to complete the project in the staff housing area, but as Mr. Dykes stated, the costs listed on Exhibit 10 (except for the \$1,533.20 estimate) were costs actually incurred, that is, spent by the Cooperative as of the date of the exhibit. It was not Mr. Dykes' job to make decisions about costs himself or their allocation, which clearly was another division of the Cooperative (T-422/10). Gulf Power failed to take Mr. Dykes' deposition, and had they done so, they could have determined who had at Gulf Coast could provide the detail to their questions. They also failed to ask Mr. Gordon the same questions.

Adding the Cooperative's estimated \$17, 914.00 to its total of \$58,211.60 brings its subtotal to \$76,125.60. Gulf Power's "estimate only" subtotal is \$73,974.00. The overall totals favor Gulf Coast by \$124,704.00 versus \$129,047.00, without adding the \$36,996.74 to Gulf Power's costs to

relocate the Red Sapp Road line.

Gulf Power's Exhibit 38, for which no witness of Gulf Power testified, contradicts Weintritt's own testimony by attempting to change the \$21,369.00 figure to \$14,308.00, and the \$45,169.00 figure by deducting \$13,862.00. Weintritt did not testify that there was any deduction to either of those figures when he had the chance to do so on cross-examination. Gulf Power fails to include its upgrade to its Vernon substation, its reinsulation expense, and regulator costs, which defies logic, if as Weintritt claimed, the upgrades were not necessary to provide reliable service to the prison site (Weintritt, T-117/1-2). He claimed the upgrades were for the entire system (T-116/13-14), but a review of his own Exhibit 2 (WCW-1, Page 4 of 5) shows that the upgrades could only serve to improve service to the area of the correctional facility site. Look at the timing of the Gulf Power improvements. The new transformer in the Vernon substation was energized in May, 1993, the Moss Hill reinsulation from 12 kV to 25 kV was done in the second half of 1993 (Weintritt T-93/25) and the regulators early in 1994 (T-94/15).

Gulf Power improved its facilities to provide more reliable service to the area and to correct voltage problems which could only have existed downstream from its regulator bank at Moss Hill (Gordon, T-227/21-25, T-228/1-12). Gulf Power has no customers below 279 and 77 (Norris, T-380/20). Gulf Power's Exhibit 38 also adds the \$45,000.00 grant to

Washington County and Gulf Coast's \$11,500.00 expense to process the \$300,000.00 rural development loan to the Cooperative's total costs (even if it were accurate, Gulf Coast's costs would still be less than Gulf Power's - \$166,473.00 to \$162,593.00) even though none of those costs were associated with the cost of the construction of any facilities and were paid by the Cooperative's members (comparable to Gulf Power's stockholders) with member approval (Norris, T-297/1-12). Although pointing a finger at Gulf Coast, Gulf Power itself engages in similar activities which apparently are okay if Gulf Power does it, but not if Gulf Coast does it. Mr. Weintritt was asked the question, "And your company does, though, get involved in grants and loans or use of employees for helping in these kinds of projects?" (T-146/6-8). Mr. Weintritt answered, "Yes, we have in the past done all of the above." (T-146/9) Gulf Power has an employee whose job is dedicated to economic development on a daily basis, Mr. Daugherty (Hodges, T-598 to T-600/4; T-605/5-9, T-614/12-18) and Mr. Hodges himself provided one example of Gulf Power's contribution of \$125,000.00 to economic development to Escambia County (T-616-23 to T-617/9). Had Gulf Power been selected to serve, and Gulf Coast objected, would Gulf Power agree that the salary and expenses of Mr. Daugherty be included in its cost to serve? If Gulf Power had contributed \$45,000.00 as Mr. Daugherty asked his own company to do, (T-614/18-24) would Gulf Power agree that

\$45,000.00 should be added to its cost to provide service to the prison site?

The parties also spent time arguing over generation costs, load diversity, and the times of peak loads on their systems. While this may have been much ado about nothing, it does point out that Gulf Power will go to any lengths to claim it has no cost at all for this load, and refuses to consider that diversity on Alabama Electric Cooperative's system will benefit Gulf Coast's wholesale costs. Mr. Parish points to typical peak times for a comparable prison load in Alabama (T-474/16). Using the best data available, Parish calculated that Gulf Coast's peak capacity would be about 65% to 70% of the peak load, hence a diversity advantage to Gulf Coast (Parish, T-460/14-21, T-461/1-9). Parish finds that there is no diversity on Gulf Power's systems (T-461/16-24) and therefore Gulf Coast's costs would be based on 258 KW from Alabama Electric Cooperative, while Gulf Power's capacity costs would be based on 398 KW (T-462/1-7). Parish reviewed the Southern Company pool arrangement relating to its II contract, and Gulf Power's costs associated to it. (T-462/824; T-463/1-24). As Parish noted, the IIC agreement allows Gulf Power a free ride for the first year for additional capacity responsibility, and it is then phased in (T-482) over the next three years. This methodology is wrong, because Gulf Power pays nothing for a new load in the first year, and will actually continue to pay for the load even

after it loses the load (T-482/11-18). Gulf Power attempted to show that Gulf Coast's long-term contracts with Alabama Electric Cooperative (AEC) were somehow imprudent (T-320/22) and spent a lot of time on that issue. The fact is that there is no evidence that long term contracts between Gulf Coast and AEC are not beneficial to Gulf Coast and its members, or that as a result of such arrangements, AEC cannot provide Gulf Coast and its members systems low cost service, (Gulf Coast is a member of AEC and has a vote on AEC's Board) (T-320/22-25; T-321/1-3; T-321/11-13) and, in fact, Mr. Norris has been Chairman of the Board of Alabama Electric Cooperative (T-321/24). Mr. Pope and Mr. Howell both attacked Mr. Parish's testimony on diversity and IIC costs to Gulf Power. Mr. Pope's testimony, both direct and at the hearing, are misleading, if not outright misrepresentations, since his testimony was based on the Escambia County jail which he did not disclose until a few days before the hearing in an interrogatory answer. When he was deposed, he thought that he had testified regarding the Century Prison. (T-519/21) He was confused. (T-522/3-4) He indicated at the hearing that the hourly metering was at the Holmes and Century Prisons, which was only most recently installed (T-527/4-6). It is unclear if the metering was installed at the time he prepared his testimony (It was filed on June 3, 1994.) Mr. Pope indicated he did not recall when the hourly metering was installed on the Holmes Prison (T-533/17-19) and that it was

installed on the Century Prison in September, apparently 1994. A reasonable person could conclude that Mr. Pope was deliberately misleading the Commission.

During the summary of his testimony at the hearing, Mr. Pope abandoned his prefiled testimony on the Escambia County Jail and introduced what became Exhibit 28, which is one day of 15-minute load data in kilowatts on the Holmes County Prison. He alleges it was the day of Gulf's peak that month. There is no clue what load data might show for other days or months. Exhibit 28 shows a peak at the hour ending 1400 of 459.40 for the day and a demand of 394.56 for hour ending 1700, when Mr. Pope incorrectly testified that Gulf's peak occurs. The 86% in parenthesis is that contribution to Gulf's peak at 1700 divided by the peak prison load for the day of 459.40. Then Gulf Power apparently showed the 373.37 at the hour ending 1800 indicating it is 81% of the prison peak at the hour ending 1400. Mr. Pope said there was no difference in diversity shown by his own exhibit. Exhibit 28 did not show that, even incorrectly assuming Gulf Power would peak at 5:00 P.M. and Crystal Lake would peak at 6:00 P.M.

Exhibit 31 by Gulf Power, showing three winter and three summer months peaking times for Gulf Power's and Gulf Coast's Crystal Lake delivery point is essentially meaningless. All twelve months make a difference in purchases by Gulf Power from the pool and by Gulf Coast from Alabama Electric Cooperative. Attached to Exhibit 28 was Gulf Power's response

to Staff's second set of interrogatories (Exhibit 39, Item 10) which shows the hours Gulf Power peaked for all 48 months and the hours Crystal Lake peaked for all 48 months (see corresponding Staff interrogatories to Gulf Coast, second set (Exhibit 40, Item 18). Analysis will show, as Mr. Parish stated during cross-examination, that by any measure, either range of peaking hours or average peaking hours, Crystal Lake peaks later than Gulf Power and in the summer on the average, Crystal Lake peaked 2.5 hours later than Gulf Power (T-489/7-9; T-490/4-8; T-491/8-10).

Using Gulf Power's Exhibit 28, the loads shown, using Gulf Power's average summer peaking time of the hour ending at 4:15 P.M. and Crystal Lake substation's average peaking time of the hour ending at 6:45 P.M., a 2.5 hour difference, the diversity factor for Gulf Coast would be 324.4 (the prison demand at the hour ending 1845) divided 459.4 (the prison peak at hour ending 1400) or .706. Gulf Power's diversity factor using this data would be 380.8 (the prison load for the hour ending 1615, divided by 459.4 (the prison peak at the hour ending 1400) or .829. By any measure, there is some diversity favoring Gulf Coast.

Mr. Howell's rebuttal testimony and his testimony at the hearing can both be summarized as smoke screens themselves, and misleading. He admitted that Gulf Power had capacity costs associated with loads such as this in the Southern Company pool capacity equalization each month. His statement

at T-564/19-23 implies that the reason Gulf Coast's retail rate for the prison is higher than Gulf Powers is due to purchases from Alabama Electric Cooperative instead of Gulf Power. Mr. Howell should know better, because he is mixing a comparison of retail rates of Gulf Coast and Gulf Power with the incremental cost to serve the load of Gulf Power versus Gulf Coast and Alabama Electric Cooperative.

Another smoke screen from Mr. Howell was his claim that if all companies grow at the same rate, IIC payments do not change (T-567/25 and T-568/1-2). On cross-examination he finally and reluctantly admitted that other factors, including adding generation would cause payments to change (T-569/2-7). He also finally admitted that Gulf Power cannot grow at the same rate with and without this load (T-569/20-21). In other words, this load has an incremental cost impact on Gulf Power regardless of the growth rate of Gulf Power or other Southern companies, and regardless of the generation capacity added by the other Southern Company systems. Finally, Mr. Howell did not know or wrongly stated the effect on pool capacity payments of adding generation capacity. Mr. Howell testified that for a large load, it might be appropriate to look at what avoided generation capacity costs are and admits that for Gulf it would be a combustion turbine (T-570/25 to T-571/1-4). When asked whether or not Gulf would have the pool equalization costs and a corresponding CT cost, he incorrectly replies "no" (T-571/5-7). Since there is more diversity

favoring Gulf Coast and Alabama Electric Cooperative (less load contributed to peaks) and since AEC's and Gulf Power's avoided cost generation are both combustion turbines, there is less generation capacity required by AEC and Gulf Coast to serve this load. Mr. Howell also states that if Gulf Power picks up a 160-megawatt load, it can add a 160 megawatt CT and there would be no change in pool capacity payments (T-571/9-13). This is not true, because adding a 160-megawatt firm load requires not only 160 megawatts of generation capacity but also capacity reserves on that generating capacity. Even if Gulf Power added twice as much capacity as new load, there would still be an incremental pool impact associated with this load, i.e., Gulf Power would sell less capacity to the pool because of the load. The bottom line is that Mr. Howell's testimony did not disagree with anything Mr. Parish said regarding a pool impact associated with the load, and his testimony itself is a series of boisterous smoke screens to mask the fact that there is a pool cost impact on Gulf Power.

Issue Number 8: What would be the effect on each utility's rate payers if it were not permitted to serve the existing facility?

This is as much an equity issue as it is factual. If Gulf Coast is not permitted to serve in an area it has historically served since 1950, if it is not permitted to take on a new load that will help it to a greater degree than it would effect Gulf Power in achieving load diversity and

improved load factor, then Gulf Coast's primarily residential members will have been denied an opportunity to help lower the real cost to the Cooperative's rate payers, its own members (T-293/7-15; T-390/16-25; T-391/12-15; T-315/21-25; T-326/1-2). Gulf Power elected to serve in more dense and profitable areas (T-291/7-13) and has 12 times the revenue per mile of line than Gulf Coast has (T-294/1-7). Although Gulf Power refused to say why it wasn't serving all of Washington County (it claims it began serving in 1926) (Weintritt T-68/15) or why Gulf Power is not serving all of the customers in Washington County (Weintritt T-90/19-25, T-91/1-6), the answer is obvious. Gulf Power does not want to serve high cost, low revenue loads and has been content to let Gulf Coast serve them. The impact of this load on Gulf Coast's less than 14,000 members is far greater than on a company the size of Gulf Power. The answer to this issue is based on plain common sense.

Issue Number 9: Which party is capable of providing electric service to the correctional facility site at the lowest rate to the Department of Corrections.

Gulf Coast's position as it previously stated, is that rates should not be an issue unless the Commission first finds that the rates of a utility are unjust and unreasonable. Gulf Power's two main thrusts in this case are rates and reliability. Throughout Mr. Hodge's testimony, he says over and over again that Gulf Power wants to "earn the business"

by lower rates and more reliable service. Well, reliability is now a dead issue. So, what about rates, if they are even relevant? Gulf Power testified that the rate differential between the two utilities is \$23,027.04 per year (Exhibit 2-WCW-1, Page 3 of 5), yet by the time of the hearing Gulf Power's rates had gone up from its claim of \$7,442.66 per month to \$7,846.37 per month (Exhibit 7), an increase of \$403.71 per month or \$4,844.52 per year. Notwithstanding that fact, Mr. Weintritt, at the hearing, still claimed a differential of over \$20,000.00 per year (T-81/6). Gulf Power's initial cost comparison, furnished by Mr. Weintritt (Exhibit 2), shows a monthly bill of \$9,361.58 for Gulf Coast and \$7,442.66 for Gulf Power. As of the hearing, (See Exhibit 7) the rate comparison is \$7,846.37 for Gulf Power and \$8,396.38 for Gulf Coast without a discount for capital credits. On an annual basis, this is a \$6,600.12 difference and a 71% difference from what Gulf Power claimed! Gulf Coast includes a capital credit allocation, as it is required to do, and although the capital credit is not a direct deduction from the bill, it is credited to the member's account for refunding in the future. Gulf Coast is currently on a 14-year cycle of refunding capital credits, and as Mr. Cresse got Mr. Gordon to agree, the October, 1994 capital credit of \$755.67 for the correctional facility would be \$290.00 if reduced to present value. (T-250/21) Taking the present value of that capital credit allocation and applying it to Gulf Coast's billing, and

using Exhibit 11 and an average COPSA of .00060 instead of the one used on Exhibit 7, the effective billing to the Department of Corrections would be \$8,727.50, or a difference with Gulf Power of \$901.00 per month or \$10,813.00 per year, more than 50% less than Gulf Power claimed. All Gulf Power has accomplished by bringing up rates is to show that they change year to year and month to month and that Gulf Power's characterization of the rate differential is misleading. The bottom line is that the Department of Corrections chose the Cooperative anyway with full knowledge of the rate differential.

Issue Number 10: What is the customer preference for electric service to the correction facility?

Obviously, the customer preference in this case is for Gulf Coast Electric Cooperative, Inc. to serve the correctional facility site as clearly stated by the Department of Corrections' own Assistant Secretary for Office of Management and Budget, Ron Kronenberger (T-34/18), who when asked the question "Based on what you have reviewed so far, and, if you had a choice of providers to serve the prison in Washington County, what company would you chose? Mr. Kronenberger said, "We would support the decision that we made to go with Gulf Coast." (T-38/8-12).

Gulf Power made a lot of noise that the Department of Corrections did not chose Gulf Coast but left the decision up to the Washington County Commission. Whatever you call it,

the Department of Corrections put that issue to rest by flatly stating that Gulf Coast was indeed its choice.

Although the Department of Corrections is concerned about rates, when all things are equal (T-37/23), the Department of Corrections' perception is the same as Gulf Coast's and the Washington County Commissions', that there are other factors besides rates to be considered:

1) "I think there is a lot of extenuating circumstances in here that we had in looking also at the criteria on who should be the provider with the lines, the lines crossing the site, the costs that we would probably have to pay or somebody would have to pay to have that line removed where the compound is. The various contributions that the other utility company [Gulf Coast] had provided to local government to help bring that site a reality. Possibly, without their assistance there would be no site over there, the County possibly not having the resources to go ahead and purchase that site." (Kronenberger, T-38/15-24).

2) "And I think that we looked at the other criteria, too, as far as I mentioned the placement of the lines, who was at the area first. I think Gulf Coast was there in 1950, the first birthmark or whatever they call on that, so I think that, you know, that was part of it. And because of that, and me no being aware that there was as dispute over two companies that wanted to provide that service, I was certainly supportive of the County's selection, and I think that was

very instrumental in the County wanting to go with Gulf Coast." (Kronenberger, T-39/18-25 and T-40/1-2)

3) ". . .when we were talking about the total cost, and what the costs were on utility rates, when we looked at that, there may have been some costs associated with removing lines that would have been an additional charge possibly to the Department for moving those lines off of our site that were Gulf Coast lines." (Kronenberger, T-42/3-7).

Kronenberger was not aware, as he stated, that Gulf Power was going to dispute this site until after the Department of Corrections had already approved Gulf Coast. Indeed, the question that Mr. Kronenberger always had in his mind was "Why would Gulf Power wait 60 days after a decision has been made to go with Gulf Coast before they notified me that they were also claiming jurisdictional, I guess, rights to that particular area there?" (T-55/1-4) Interestingly, when Gulf Power took Mr. Kronenberger's deposition on October 7, 1994, seven people from Gulf Power showed up (T-55/5). When Gulf Power went to see Mr. Kronenberger, Gulf Power advised him that they had "jurisdictional rights" (T-55/12), a far cry from Mr. Hodges' claim that all Gulf Power was trying to do was "earn the business". Again we have misleading statements from Gulf Power. Their term "earn the business" implies an honest effort to convince someone to do business with you. Yet on cross-examination, Mr. Hodges admitted that what Gulf Power really means is that all it has to do is have a lower

rate and ipso facto, it has majically "earned the business," (T-620/12-18) and if the customer doesn't choose Gulf Power, it will go complain to the Commission (T-629/11). This is a gross distortion of a "fair shot" at earning the business (T-627/17-18).

Issue Number 11: Does unnecessary and uneconomic duplication of electric facilities exist in the disputed area?

It is Gulf Coast's position that uneconomic duplication of facilities has occurred, caused by Gulf Power since 1971. Gulf Power's position is kind of like the farmer who built a fence a hundred yards over into his neighbor's property, claiming it as his boundary line, and when the neighbor climbed over the fence to come and talk about it, the farmer tried to have him arrested for trespassing. This area was served by Gulf Coast for 21 years before Gulf Power decided to cherry pick what it incorrectly thought would be a big load - the Sunny Hills Deltona development.

As has been previously noted in this brief, there are numerous areas where the utilities cross each other and where their facilities are close or on opposite sides of a street. If the line that the Cooperative built on 279 is in any fashion a "duplication", it certainly is a necessary and economic duplication to protect the Cooperative's customers at the western end of the Red Sapp line, to enable the Cooperative to continue to provide adequate and reliable service to those customers, and for the Cooperative to

provide service to a customer who requested it on a site where the Cooperative's facilities already existed. In addition, as the testimony has clearly shown, Gulf Coast needs the opportunity to serve these kinds of loads to help its load factor, load diversity and overall costs. None of these reasons are unnecessary and uneconomic.

On the other hand, Gulf Power has, apparently as a result of rather uncareful planning, invested \$3,146,000.00 in Sunny Hills area alone for 330 customers (Weintritt, T-106/6-7) for a total investment cost per customer of \$9,533.00. In the five mile radius of the site, Gulf Power has invested \$3,314,000.00 for 532 customers (Weintritt, T-110/10-17) for a total investment of \$6,229.00 per customer. The Cooperative, on the other hand, has invested a total of \$1,233,475.00 in the five mile radius area for service to a total of 665 customers, or an investment of \$1,854.00 per customer. (Exhibit 40, Item 16a and 16c) Who, then, is fooling who about unnecessary and uneconomic expenditures?

Issue Number 12: Do the parties have a formal territorial agreement that covers the dispute area?

This is a stipulated issue, the parties do not have a formal territorial agreement that covers any area in South Washington or Bay Counties.

Issue Number 13: Which party should be permitted to serve the disputed area and what conditions, if any, should accompany the Commission's decision?

All of the reasons previously stated, and particularly the equities involved clearly lead to the conclusion that Gulf Coast Electric Cooperative should be allowed to continue its service to its historic service area.

The Commission should also require the two utilities to submit reports within 180 days of its order, to advise the Commission in detail of the location and proximity of all their facilities in South Washington and Bay Counties to each other, identify all parallel lines and crossings, and all areas of potential disputes. The order should also require the parties to meet and discuss ways to avoid further uneconomic duplication, and to include their progress in their report. If the parties fail to reach an agreement that will lead to the avoidance of uneconomic duplication of their distribution facilities (in the judgment of the Commission) then the Commission should initiate proceedings on its own motion to do so. [Fla. Stat. Sec.366.04(2)(e)]

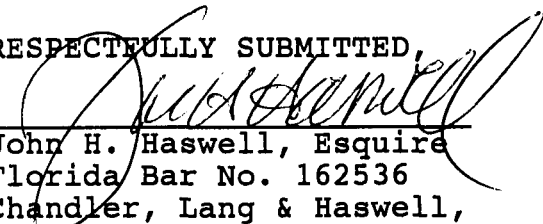
It should also be noted, as the Commission reviews the testimony in this case, that the credibility of the witnesses themselves is an important factor. Gulf Coast placed no one next to its witnesses while they were testifying. If they forgot something or didn't understand a question, Gulf Coast was stuck with it. On the other hand, the record shows that both witnesses, Weintritt and Hodges, were accompanied while they testified by Mr. Dunn of Gulf Power (as to Weintritt, T-122/17-25; T-123/1-3; as to Hodges, T-646/1-16). Mr. Dunn's

assignment, it appears, was to help Gulf Power's witnesses when they got in trouble and to whisper answers to them (T-646/4). What is not troubling is that Mr. Dunn was running back and forth from the witness to the counsel table during the testimony. Coupled with Mr. Pope's "confusion" on what prison or jail he was comparing, and with Mr. Howell's unsuccessful denials of costs to Gulf Power, Gulf Power's entire case was a less than credible presentation. But it is indicative of Gulf Power's attitude and posture, for at the end of the case, Gulf Power unnecessarily handed out copies of the Escambia River case [421 So.2d 1384, (Fla 1982)] for the obvious purpose of suggesting that this Commission has no choice but to award the site to Gulf Power and to get into the record the kind of testimony that Gulf Power tried to get in through Mr. Klepper (T-648/3-13). The Commission's able legal staff is capable of knowing and understanding the case law without introducing it as testimony of a witness! Although Gulf Coast believes that the Florida Supreme Court erred in its decision in Escambia River, and showed a complete lack of understanding of the evolution of the cooperative form of electric utilities, it none-the-less recognized that both factual and equitable distinctions may favor one utility over the other. (Id. at 1385). Both factually and equitably, the distinctions in this case favor Gulf Coast.

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 22nd day of November, 1994, by regular U.S.

mail to Ed Holland, Jr., Esquire, Jeffrey A. Stone, Esquire,
and Teresa E. Liles, Esquire, 3 West Garden Street, Suite 700,
P.O. Box 12950, Pensacola, Florida 32576-2950 and to Martha
Carter Brown, Division of Legal Services, 101 E. Gaines Street
#212, Tallahassee, Florida 32399-6562 by hand delivery this
22nd day of November, 1994.

RESPECTFULLY SUBMITTED,


John H. Haswell, Esquire
Florida Bar No. 162536
Chandler, Lang & Haswell,
P.A.
211 N.E. First Street
Gainesville, Florida 32601
904-376-5226

Patrick Floyd, Esquire
408 Long Avenue
Port St. Joe, FL 32456
904-227-7413