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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

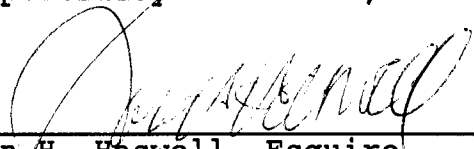
GULF COAST ELECTRIC)	Docket Number: 930885-EU
COOPERATIVE, INC.,)	
)	
Respondent/Appellant)	
)	
v.)	
)	NOTICE OF APPEAL
FLORIDA PUBLIC SERVICE)	TO
COMMISSION)	THE SUPREME COURT OF FLORIDA
)	
and)	
)	
GULF POWER COMPANY,)	
)	
Petitioner/Appellee)	

NOTICE IS HEREBY GIVEN that Gulf Coast Electric Cooperative Inc. (Gulf Coast), Respondent/Appellant appeals to the Supreme Court of Florida, the Order of the Florida Public Service Commission rendered on March 1, 1995, Order Number PS-95-0271-FOF-EU. The nature of the Order is a final order resolving a territorial dispute between Gulf Coast and Gulf Power Company (Gulf Power). A copy of the Order appealed from is attached hereto in accordance with Rule 9.110(d).

The Supreme Court has jurisdiction in accordance with Article V, §3(b)(2) of the Constitution of the State of Florida, Florida Statute, §366.10 and Rule 9.030(a)(1)(B)(ii), Florida

Rules of Civil Procedure. The action sought to be reviewed relates to the service of utilities providing electric service.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 30 day of March, 1995, 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, Esquire, Division of Legal Services, 101 E. Gaines Street, #212, Tallahassee, Florida 32399-6562.



of Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. v. Gulf Power Company)
DOCKET NO. 930885-EU)
ORDER NO. PSC-95-0271-FOF-EU)
ISSUED: March 1, 1995)

ORDER NO. PSC-95-0271-FOF-EU
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JULIA L. JOHNSON

ORDER RESOLVING TERRITORIAL DISPUTE

In April of 1993, Gulf Coast Electric Cooperative, Inc. (Gulf Coast) became aware that the Department of Corrections (Department) was planning to locate a prison in West Florida and was considering sites in several counties, including Washington County. Having previously assisted in the location of a prison site in Gulf County, Gulf Coast made a similar proposal to the Washington County Commission. Gulf Coast offered a \$45,000 grant and assistance in securing a \$308,000 loan from the Rural Electrification Administration (REA) to acquire the property in Washington County. The Department of Corrections chose the Washington County site for the new prison, and allowed the Washington County Commission to choose the electric service provider. The County Commission chose Gulf Coast, and the Department of Corrections approved the choice.

In order to provide permanent service to the prison site, Gulf Coast relocated and upgraded its existing Red Sapp Road line that crossed the site. Gulf Coast upgraded the line from single-phase to three-phase, and moved it to a location along County Road 279. The cost of the relocation was \$36,966.74. The cost of the upgrade was \$14,582.54. The new location was across the road from Gulf Power's existing three-phase line that it had constructed to serve its Sunny Hills subdivision in the early 1970's.

After the grant and loan were consummated and the prison site secured, and after Gulf Coast was chosen to provide service and incurred the cost to move its Red Sapp Road line off the site, Gulf Power informed the Department of Corrections that it wanted to serve the prison. Gulf Power had not given Gulf Coast, the Washington County Commission, or the Department of Corrections official in charge of the project, any prior indication that it wished to serve the prison.

Thereafter, on September 8, 1993, Gulf Power filed a petition to resolve a territorial dispute with Gulf Coast. In its petition, Gulf Power asserted that it was entitled to serve the prison site, and claimed that Gulf Coast had constructed facilities that duplicated its existing facilities.

A prehearing conference was held on September 29, 1994. We held a two-day administrative hearing on the matter on October 19 and 20, 1994. The parties filed post-hearing statements of issues and positions and post-hearing briefs. Gulf Power also filed proposed findings of fact, which we have specifically addressed in Attachment A of this order.

We hold that Gulf Power shall serve the Washington County Correctional Facility. We also hold that Gulf Power shall reimburse Gulf Coast for \$36,996.74, the cost to relocate the Red Sapp line as a single-phase line. The parties shall return to the Commission within 180 days with a report identifying all parallel lines and crossings of their facilities, and all areas of potential dispute in south Washington and Bay counties. During that time the parties are directed to negotiate in good faith to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary in south Washington and Bay Counties. If the parties are unable to negotiate an agreement, we will conduct an additional evidentiary proceeding to resolve the continuing dispute between them in Washington and Bay counties. Our reasons for this decision are set out below.

The Washington County Correctional Facility

Section 366.04(2)(e), Florida Statutes, gives us the explicit authority to resolve territorial disputes between all electric utilities in the State. We have implemented that authority in Rules 25-6.0439-25-6.0442, Florida Administrative Code, "Territorial Agreements and Disputes for Electric Utilities". Rule 25-6.0441(2) sets out the matters that the Commission may consider in resolving territorial disputes. That subsection says:

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

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

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to which additional facilities are needed;

- (b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;
- (c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and
- (d) customer preference if all other factors are substantially equal.

The statute and our rules give us considerable authority and discretion to resolve territorial disputes and to fulfill our responsibilities over the planning, development, maintenance, and coordination of Florida's energy grid. Section 366.04(5) states:

- (5) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

We have considered the factors set out in our rules, as well as the Grid Bill's direction to avoid uneconomic duplication of generation, transmission and distribution facilities in the State, in deciding that Gulf Power should serve the new prison site.

Ability to serve

The area surrounding the site of the prison is essentially rural, and both parties have agreed that population growth in the vicinity will be primarily residential with the possibility of some small commercial development. Both utilities have been serving customers in the vicinity of the intersection of County Road 279

and State Road 77 for over 20 years. Gulf Coast has served retail customers along Red Sapp Road since 1949-50. Gulf Coast has also maintained two-phase and three-phase service adjacent to the correctional facility site since 1950. Currently, Gulf Coast is serving 665 customers within 5 miles of the site. Gulf Power currently has 532 metered customers within 5 miles of the site, 330 of which are in Sunny Hills. These customers are served from Gulf Power's three-phase facilities along County Road 279 and State Road 77 and extending easterly towards Sunny Hills.

The Washington County Correctional Institute's demand will be approximately 372 KW and the annual energy consumption will be approximately 1,961.4 MWH beginning in 1995. Both utilities have sufficient facilities and substation capacity in the area to accommodate that load. We find that both utilities have adequate facilities to serve the prison, both are capable of providing reliable electric service, and, therefore, both have a comparable ability to serve.

Cost to serve

Gulf Coast constructed approximately 4,000 feet of three-phase distribution line along County Road 279, and incurred \$14,582.54 in additional construction costs to provide the prison with power. This span of line connects Gulf Coast's existing three-phase lines along State Road 77 and its existing single phase lines extending north-westerly from Red Sapp Road along 279. Gulf Power had three-phase distribution lines already in place along 279 that border the Washington County prison site.

Both utilities' cost to provide service on the actual prison site should be relatively the same. Because of this we have only considered the differential in costs incurred to reach the prison site.

Regardless of who provides service to the prison, Gulf Coast's Red Sapp Road line that crossed the site had to be moved. It would, however, only have to be moved as a single-phase line. Gulf Coast upgraded the relocated line to three phases, at a cost of \$14,582.54, to provide the prison with primary service. Since Gulf Power would not have to construct or upgrade any facilities to provide the prison with three-phase service, the \$14,582.54 incurred by Gulf Coast represents the differential between the two utilities' cost to serve.

Gulf Power suggests that Gulf Coast should include the \$45,000 grant made to Washington county and the \$11,500 spent to help Washington county secure the \$308,000 REA loan in its total cost to

serve. We disagree. Gulf Coast asserts that its efforts and monetary contributions are economic development incentives. As such, we consider those activities a non-refundable contribution to the entire community, regardless of who provides the electric service. Therefore, the cost incurred by Gulf Coast to help locate the prison should not be included in its overall cost to serve.

Gulf Coast suggests that Gulf Power should include the \$9,594 cost to convert the Vernon Substation to 25 KV and the \$45,909 cost for new voltage regulators in its total cost to serve the prison. We disagree. Gulf could have reliably served the prison without the upgrades, and Gulf began the initial upgrade work approximately three years before the decision was made to locate the prison in Washington County. Therefore, those costs should not be included in Gulf Power's cost to serve the prison.

Based on the discussion above, we find that the differential between the parties' cost to serve the prison is the \$14,582.54 that Gulf Coast incurred to upgrade its single-phase line.

Customer Preference

The Department of Corrections delegated the authority to select an electric provider for the Washington County Correctional Institute to the Washington County Board of Commissioners. This decision was made based on the understanding that no disputes over who would provide service to the site existed during the initial stages of the site selection process. Mr. Kronenberger, Assistant Secretary for the Office of Management and Budget with the DOC, did not become aware of Gulf Power's desire to serve the prison until the end of July, 1993, or 60 days after the site selection was finalized in May, 1993. The Department of Corrections' policy is to select the lowest cost provider when cost is the only deciding factor, but in this case cost was not the only deciding factor. The Department of Correction's decision was based on Gulf Coast's ability to provide the service, the location of Gulf Coast's lines, Gulf Coast's various contributions provided to local government to help site the prison, and Gulf Coast's patronage capital credit incentive. The record shows that the Department continues to support Washington County's selection of Gulf Coast as the electric provider for the prison, but the Department realizes that the final decision resides with this Commission.

Our Rule 25-6.0441, 2(d), Florida Administrative Code, states that we may consider customer preference in resolving territorial disputes if all other factors are substantially equal. All other factors are not substantially equal in this case, however, because, as we explain below, Gulf Coast uneconomically duplicated Gulf

Power's facilities to serve the prison. Thus customer preference will not be the determining factor in our decision.

Uneconomic duplication of facilities

We have decided that Gulf Power shall provide electric service to the new correctional facility in Washington County. Our primary reason for this is that Gulf Coast duplicated Gulf Power's existing facilities in order to serve the prison. We understand that the area in dispute is primarily rural. We understand that the additional cost to Gulf Coast to serve the facility is relatively small. We believe that Gulf Coast is as able as Gulf Power to serve reliably, and we are aware that the customer prefers Gulf Coast even though its rates are higher. We simply cannot ignore the fact that Gulf Coast's upgrade of the relocated Red Sapp Road single-phase line to three-phase duplicated Gulf Power's existing facilities. We always consider whether one utility has uneconomically duplicated the facilities of the other in a "race to serve" an area in dispute, and we do not condone such action.

The contention that Gulf Power's facilities duplicated Gulf Coast's facilities when they were installed in the 1970's does not justify Gulf Coast's duplication now. We cannot adopt a policy that sanctions further uneconomic duplication of facilities under any circumstances, and especially in this case. This is only one example of a history of uneconomic duplication of these utilities' facilities. In 1971, for instance, Gulf Power constructed its three-phase line along County Road 279 and State Road 77 to serve Sunny Hills. During construction Gulf Power crossed over Gulf Coast's facilities 18 times, and under two more times. Even during the course of these proceedings, Gulf Power crossed Gulf Coast facilities again to provide service to Alliance Realty on State Road 77.

Distribution duplication between these two utilities extends well beyond the intersection of County Road 279 and State Road 77. In Washington County alone there may be as many as 20 line crossings of these utilities, and the maps showing Gulf Power's and Gulf Coast's facilities in Bay County also demonstrate that duplication exists there as well. From the evidence in the record it appears that each utility has constructed its distribution system in total disregard of the presence of the other utility. We find that uneconomic duplication between these utilities exists near the intersection of County Road 279 and State Road 77. We further find that Gulf Power's and Gulf Coast's lines are commingled and in close proximity throughout Washington and Bay counties.

Red Sapp Road Line

We have awarded service of the Washington County prison to Gulf Power, because Gulf Coast duplicated Gulf Power's existing facilities, but we are very conscious of the role Gulf Power played in this matter. Gulf Coast made the effort and spent the money necessary to bring the new correctional facility to Washington County. But for Gulf Coast's efforts, the facility would not be here for anyone to serve. Gulf Power was aware of Gulf Coast's efforts, but said nothing. Gulf Coast was selected as the electric service provider for the prison, and incurred a cost of \$36,996.74 to relocate the Red Sapp Road Line off the prison property. Gulf Power did nothing. There is no evidence in the record that shows that Gulf Coast would have had to incur that cost if another provider was selected to serve the prison. Only after the prison site was selected, only after Gulf Coast relocated the line, did Gulf Power indicate that it disputed Gulf Coast's provision of service to the prison. While Gulf Power will be permitted to serve the prison, it will not serve at Gulf Coast's expense. Therefore, we find that Gulf Power should reimburse Gulf Coast for the cost necessary to relocate the Red Sapp single-phase line, which would have had to be relocated no matter who ultimately provided service to the prison site.

Disputed area in dispute

The parties disagree over the identification of the disputed area in this case. Gulf Power asserts that the site of the new Washington County Correctional Facility is the only area we should consider when we resolve this dispute, because it is the only site identified in Gulf Power's petition, and it is the only "active" area of dispute at this time. Gulf Coast asserts that the territorial dispute between the two utilities extends beyond the site of the prison to all areas of south Washington County and Bay County where the utilities' electric systems are commingled or in close proximity. Gulf Coast generally identified those areas on the maps of the two utilities' facilities that were submitted into evidence at the hearing. The parties stipulated that no formal territorial agreement exists between the parties, and Gulf Coast predicts that future conflict and further uneconomic duplication is very likely to occur in those areas.

As mentioned above, Section 366.04 (2)(e), Florida Statutes, gives us the authority:

To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among

rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction.
(Emphasis supplied.)

Our Rule 25-6.0441(1) provides, in part, that;

(1) A territorial dispute proceeding may be initiated by a petition from an electric utility requesting the Commission to resolve the dispute. Additionally the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. . .

The statute and our rules do not limit our authority to a particular area identified in a utility's petition. Section 366.04 (2)(e) specifically states that the Commission can resolve any dispute between electric utilities, not just disputes identified by a utility. The statute and the rule do not restrict our dispute resolution authority to "active" disputes, either. They grant us the power and discretion necessary to resolve existing, and prevent further, uneconomic duplication of facilities, as Section 366.05(2) requires. Thus, where the preponderance of the evidence demonstrates that the potential exists for future conflict, the Commission is authorized to act.

There is recent precedent for this position. In Re: Petition to resolve territorial dispute between Okefenoke Rural Electric Membership Corporation and Jacksonville Electric Authority, Docket No. 911141-EU, Jacksonville Electric Authority (JEA) argued that the only area of dispute in the case was the site of a Holiday Inn near the Jacksonville Airport. The Commission disagreed, saying:

Although JEA contends that the only area in dispute is the Jacksonville Airport Holiday Inn, the record clearly shows that the northern Duval County service area is in dispute. Uneconomic and unnecessary duplication of facilities abounds in northern Duval County, and while JEA has attempted to argue that duplication of electric facilities does not automatically make a territorial dispute, we find that in this case it clearly does demonstrate the existence of a dispute. While Okefenoke originally filed its petition to resolve who should serve the Holiday Inn - Jacksonville Airport, we cannot ignore the

many other areas in northern Duval County where a similar situation may arise. We find that the portions of northern Duval County where Okafenoka currently serves, and those portions of northern Duval county where Okefenoke could efficiently and economically provide electric service, are the areas in dispute in this proceeding.

Order No. PSC-92-1213-FOF-EU, p.5, issued October 27, 1992.

On the basis of statutory authority, the intent of the Commission's rules, and Commission precedent, we find that we clearly can, and should, consider all areas of dispute that the record shows in this proceeding. It is clear that the site of the Washington County Correctional Institute is in dispute, but we agree with Gulf Coast that a much broader dispute exists between these utilities. The broader territorial dispute extends to all areas of South Washington County and Bay County where the parties' facilities are commingled and in close proximity. (See exhibit 6) More specifically, the dispute encompasses all of south Washington County that lies south of a line drawn from Moss Hill Church on County Road 279 to a point just south of Wassau on State Road 77. This line extends east and west in Washington County. In Bay County, the dispute extends east and northeast of Panama City, along parts of Highway 231 to the northeast, and east of the small city of Callaway. Those are the areas where the parties' facilities are commingled or in close proximity.

Gulf Power claims that there is no area of dispute other than the prison site, because the parties have not litigated a territorial dispute in nine years. Gulf Power's witness, Mr. Weintritt suggested that this fact demonstrated that the internal system Gulf Power used to determine which new customers it should serve generally worked well to avoid disputes and duplication of Gulf Coast's facilities. Gulf Power considers natural boundaries, uneconomic duplication, existing service and customer choice to arrive at decisions regarding service to new customers. Mr. Hodges, Gulf Coast's witness, contradicted Mr. Weintritt's testimony. Mr. Hodges testified that the utilities are often in conflict, but Gulf Coast was not financially able to litigate every incident. Mr. Hodges testified that Gulf Power had crossed Gulf Coast's facilities to serve a real estate office even while this proceeding was pending.

The parties have a long history of territorial conflict. They have never successfully negotiated a territorial agreement, despite specific suggestions from the Commission and from the

Florida Supreme Court.¹ Territorial conflict appears to be a way of life for these utilities. It boils over into litigation intermittently, but it is always simmering beneath the surface, to the detriment of the utilities, their ratepayers, and the public interest. It is time to resolve the larger conflict between Gulf Power and Gulf coast. Therefore, we find that the broader area in dispute in this case is all areas in South Washington County and Bay County where the facilities of the utilities are commingled or in close proximity and the potential for further uneconomic duplication of facilities exists. We make this finding for these reasons: the distribution facilities of the utilities are commingled or in very close proximity in many places in Washington and Bay Counties; the utilities are often in conflict, but do not litigate every duplication or line crossing that occurs; the parties have a long history of territorial disputes; and, the parties have never been able to develop a territorial agreement. Under these circumstances, we believe that the potential for more conflict and more uneconomic duplication of facilities is great, and needs to be addressed.

Gulf Coast suggests that the utilities should submit detailed reports advising the Commission of the location and proximity of all their facilities in south Washington and Bay Counties, identifying all parallel lines and crossings, and all areas of potential dispute. Gulf Coast also suggests that the parties should be required to meet and discuss ways to avoid further uneconomic duplication of facilities. If the parties are unable to

¹ In Re: Complaint of Gulf Coast Electric Cooperative, Inc., Docket No. 810171-EU, Order No. 10444, issued December 8, 1981; In Re: Petition of Gulf Power Company involving a dispute with Gulf Coast Electric Cooperative, Docket No. 830154-EU, Order No. 12858, issued January 1, 1984; In Re: Petition of Gulf Coast Electric Cooperative, Inc. against Gulf Power Company concerning a territorial dispute, Docket no. 830484-EU, Order No. 13668, issued September 10, 1984; In Re: Petition of Gulf Coast Electric Cooperative, Inc. against Gulf Power Company to refrain from offering electrical service or constructing duplicate facilities into disputed areas in Washington County, Docket No. 850087-EU, Order No. 16106, issued May 13, 1986; In Re: Petition of Gulf Coast Electric Cooperative to resolve territorial dispute with Gulf Power Company in Washington County, Docket No. 850247-EU, Order No. 16105, issued May 13, 1986; Gulf Coast Electric Cooperative v. Florida Public Service Commission, 462 So.2d 1092 (Fla. 1985); Gulf Power Co. v. Public Service Commission, 480 So.2d 97 (Fla. 1985).

reach an agreement that will avoid uneconomic duplication of their facilities, Gulf Coast urges us to initiate proceedings on our own motion.

We took similar action in Re: Petition to resolve territorial dispute between Okefenoke Rural electric Membership Corporation and Jacksonville Electric Authority (JEA) to resolve the conflict in Duval County. In that case the action was successful. We awarded the Holiday Inn to Okefenoke and ordered JEA to submit a detailed plan for the elimination of all duplication of facilities and the prevention of further uneconomic duplication facilities in Northern Duval County. Okefenoke was ordered to participate in the development of the plan. The docket was held open pending further action by the Commission if it found JEA's plan to be unsatisfactory. Thereafter, the parties were able to negotiate a settlement of the dispute in Northern Duval County, and they submitted a Joint Motion for Approval of Plan to Eliminate Duplicate Electric Facilities and to Resolve Territorial Dispute. We found the plan to be in the public interest, and we approved it. See Order No. PSC-93-1676-FOF-EU, issued November 18, 1993.

We support Gulf Coast's proposal. We believe that both utilities, their ratepayers, and the public interest will be well served by a final, comprehensive resolution of these utilities' continuing dispute. Therefore we direct the parties to file a report within 180 days of the date of this order, advising the Commission of the location and proximity of all their facilities in south Washington and Bay counties. The report should identify all parallel lines and crossings, and all areas of potential dispute. During that time the parties shall conduct good faith negotiations to attempt to develop an agreement that will resolve duplication of facilities and create a territorial boundary. If the parties are not able to resolve their differences, we will conduct additional evidentiary proceedings to establish a boundary ourselves. We intend to resolve the continuing dispute between these utilities once and for all.

It is therefore

ORDERED by the Florida Public Service Commission that Gulf Power Company shall provide electric service to the Washington County Correctional Facility. It is further

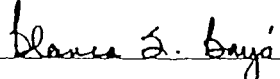
ORDERED that Gulf Power Company shall reimburse Gulf Coast Electric Cooperative \$36,996.74 for relocation of the Red Sapp Road line as a single-phase line. It is further

ORDERED that the parties shall return to the Commission within 180 days of the date of issuance of this final order with a report identifying all parallel lines and crossings of their facilities, and all areas of potential dispute in south Washington and Bay counties. During that time the parties are directed to negotiate in good faith to develop a territorial agreement to resolve duplication of facilities and establish a territorial boundary in south Washington and Bay Counties. It is further

ORDERED that if the parties are unable to negotiate an agreement, we will conduct an additional evidentiary proceeding to resolve the continuing dispute between them. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 1st day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

DOCKET NO. 930885-EU
PROPOSED FINDINGS OF FACT

Our responses to the proposed findings of fact submitted by Gulf Power Company are set out below.

1. The dispute between Gulf Power and Gulf Coast Electrical Cooperative, Inc. ["the Coop"] over service to the Washington County correctional facility is the only active dispute between the parties in South Washington County or Bay County that is the subject of litigation before the Commission. (TR 65, 66-68, 79).

RECOMMENDATION: Reject. Irrelevant to a determination of the material issues in this case, and not supported by a preponderance of the evidence in the record.

2. Gulf Power first began serving Washington County in 1926. (TR 68)

RECOMMENDATION: Accept.

3. Gulf Power provided all electric service, either at the retail or wholesale level, in Washington County from 1926 until 1981 when the Coop began purchasing wholesale power exclusively from Alabama Electric Cooperative. (TR 68, 596, 604)

RECOMMENDATION: Reject. Irrelevant and misleading. Gulf Coast also provided retail distribution service to its members in Washington County during that time period.

4. Prior to 1981, the Coop purchased all of its electric power from Gulf Power. (TR 68, 596, 604)

RECOMMENDATION: Accept.

5. Gulf Power, since 1971, has had 25kV, three-phase distribution lines in place along Highway 279 and Highway 77, on the highway right-of-way immediately adjacent to two sides of property which is the site of the correctional facility. (TR 66, 69, 167)

RECOMMENDATION: Accept.

6. Gulf Power's three-phase distribution lines along Highway 279 and Highway 77 can be fed from either the Sunny Hills or the Vernon substations. (TR 69, 71, 173, 658-659)

RECOMMENDATION: Accept.

7. Prior to 1993, the Coop's distribution facilities in the disputed area consisted of a radial three-phase line along Highway 77 and across the road from the site of the correctional facility and a single phase line crossing over the site of the correctional facility. (TR 70-72)

RECOMMENDATION: Accept.

8. In order to be able to provide the required permanent service to the Washington County Correctional Facility, the Coop constructed a three-phase line up Highway 279 from the intersection with Highway 77. These newly constructed three-phase distribution facilities are parallel to and opposite the highway from the existing three-phase facilities of Gulf Power Company that extend along Highway 279. (TR 70-72, 78, 166-168, 336, 398)

RECOMMENDATION: Accept.

9. The Coop would not have had to upgrade its existing facilities from single-phase to three-phase in order to serve its existing customers, if not for the correctional facility. (TR 80, 261)

RECOMMENDATION: Accept.

10. The Coop's cost for constructing three-phase service to the primary metering point was at least \$18,540.92. (EXH 10, EXH 38)

RECOMMENDATION: Accept.

11. The Coop's cost of relocation along CR 279, three-phase equivalent, was at least \$36,996.74. (EXH 10, EXH 38)

RECOMMENDATION: Reject. This statement is not supported by the exhibits referenced. Both exhibits indicate that Gulf Coast's

cost of relocation along CR 279, single-phase equivalent, was \$36,996.74.

12. The Coop's total cost of constructing the new three-phase line along Highway 279 in order to serve the correctional facility was at least \$55,557.66 (\$18,540.92 + 36,996.74). (EXH 10, EXH 38)

RECOMMENDATION: Reject. This statement is not supported by the exhibits referenced. The relocation cost of \$36,996.74 included in the total cost does not represent three-phase service.

13. Gulf Power's existing three-phase line along Highway 279 was adequate to serve the facility with no new construction other than a service drop. (TR 66, 69, 73, 78, 95-96)

RECOMMENDATION: Reject. Mr. Weintritt testified that Gulf Power would have to construct permanent service lines and install additional motors to serve the main facility, employee housing, auxiliary facilities, a classroom and a firing range for the prison. (TR 98-99)

14. Gulf Power's estimated cost to provide three-phase service to the primary metering point from its existing facilities was approximately \$7,436. (TR 97, EXH 10, EXH 38)

RECOMMENDATION: Accept.

15. The cost that the Department of Corrections would have to pay Gulf Power for electric service, on an annual basis, is lower than the cost that the Department would have to pay the Coop. (TR 73, 81, 148, 219, 229, 292, 483, EXH 2, EXH 7, EXH 11, EXH 13)

RECOMMENDATION: Accept with the insertion of the word "currently" after the word "Corrections". Mr. Weintritt admits that while it is difficult to imagine the circumstances that would cause Gulf Coast's rates to be lower than Gulf Power's, none of us can predict the future with absolute certainty. (TR 81)