

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve) DOCKET NO. 930885-EU
territorial dispute with Gulf)
Coast Electric Cooperative, Inc.,)
_____)

PROCEEDINGS: Prehearing Conference

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Monday, February 3, 1997

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

TIME: Commenced at 1:30 P.M.
Concluded at 2:45 P.M.

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2
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4 Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida
5 32399-0850, appearing on behalf of the Commission Staff,
6 located in Tallahassee.

7 JEFFREY A. STONE, Esquire, and RUSSELL A. BADDERS,
8 Esquire, Beggs & Lane, 700 Blount Building, 3 West Garden
9 Street, Post Office Box 12950, Pensacola, Florida 32576-2950,
10 appearing on behalf of Gulf Power Company.

11 JOSEPH CRESSE, Class B Practitioner, Post Office Box
12 1876, Tallahassee, Florida 32302-1876, appearing on behalf of
13 Gulf Power Company.

14 JOHN H. HASWELL, Esquire, Chandler Lang & Haswell,
15 P.A., Post Office Box 23879, Gainesville, Florida 32602 and

16 J. PATRICK FLOYD, Esquire, 408 Long Avenue, Port St.
17 Joe, Florida 32456, on behalf of Gulf Coast Electric
18 Cooperative, Inc..

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P R O C E E D I N G S

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COMMISSIONER CLARK: Would you please read the notice?

MS. JOHNSON: By notice issued January 16, 1997, this prehearing conference was set in Docket No. 930885-EU, Petition to Resolve territorial dispute with Gulf Coast Electric Cooperative by Gulf Power Company.

COMMISSIONER CLARK: We'll take appearances.

MR. FLOYD: Yes. This is Patrick Floyd for Gulf Coast Electric Cooperative.

MR. HASWELL: John Haswell on behalf of Gulf Coast Electric Cooperative.

MR. STONE: Commissioner, I'm Jeffrey A. Stone and with me is Russell Badders, of the law firm Beggs & Lane. And we also have with us Mr. Joe Cresse, who is entering an appearance as a Class B practitioner on behalf of Gulf Power Company.

The address for Beggs & Lane is as stated in the Draft Prehearing Order and we will get Mr. Cresse's address for the court reporter.

MS. JOHNSON: Vicki Johnson on behalf of the Commission Staff.

COMMISSIONER CLARK: Thank you. Ms. Johnson, how do you suggest we proceed?

MS. JOHNSON: Commissioner Clark, as noted in the Prehearing Order, there are three currently outstanding

1 motions. Gulf Coast has filed a Motion to Compel Discovery and
2 a Motion to Strike Testimony. Gulf Power Company and Gulf
3 Coast have filed a Joint Motion for Continuance of the hearing.

4 You may want to address those before proceeding with
5 the prehearing conference.

6 COMMISSIONER CLARK: Okay. Let me ask you a question.
7 On the Motion to Strike the Testimony, does Staff have a
8 recommendation on that?

9 MS. JOHNSON: Not at this time.

10 COMMISSIONER CLARK: Okay. And the Motion To Compel?

11 MS. JOHNSON: Yes.

12 COMMISSIONER CLARK: Now, is it your recommendation
13 that we take argument on the Motion to Strike, the Motion to
14 Compel and the joint motion to extend the time for the hearing?

15 MS. JOHNSON: Well, it's my understanding that with
16 respect to the Motion to Strike Testimony, that it would be
17 appropriate to have that heard immediately preceding the
18 hearing so that the presiding officer could rule on it.

19 COMMISSIONER CLARK: Okay.

20 MS. JOHNSON: I would think that, yes, we should take
21 oral argument, if any, on the Motion to Compel and the Motion
22 for Continuance.

23 COMMISSIONER CLARK: All right. Do you have a
24 recommendation as to which one we should take up first?

25 MS. JOHNSON: At your pleasure.

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1 COMMISSIONER CLARK: Let me ask a question. Did I see
2 some information that indicates that the -- As I understand it,
3 the reason for the Motion for Continuance is the need for more
4 time to answer some of Staff's interrogatories; is that
5 correct?

6 MR. STONE: That is part of it, yes.

7 COMMISSIONER CLARK: What's the other part of it?

8 MR. STONE: It's a combined -- Well, another aspect of
9 the Motion for Continuance is the fact that both sides believe
10 that two days scheduled for the hearing will not be sufficient
11 time to reasonably conclude the hearing.

12 And then, finally, we have been devoting our efforts
13 to completing discovery over the last couple of weeks and, as a
14 result, we haven't had time to be preparing for the hearing
15 itself. So, I guess that would be three distinct aspects of
16 the Motion for Continuance.

17 COMMISSIONER CLARK: Let me see. Let me find -- I
18 know I have the Joint Motion for Continuance. I just can't
19 find it. Motion and Stipulation for Continuance, that's what
20 it's entitled. Okay.

21 MS. JOHNSON: Yes.

22 COMMISSIONER CLARK: I'm sorry, where -- I only saw
23 the one -- that it was the need for more time to respond to
24 Staff's interrogatories. I evidently missed something in
25 the --

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1 MS. JOHNSON: The parties did, if I recall, and I'm
2 looking for that, ask that the number of days for the hearing
3 be extended from two days.

4 MR. HASWELL: Right; that would be paragraph 13 of the
5 Motion.

6 COMMISSIONER CLARK: Okay. I just didn't see where
7 you requested more than two days for a hearing or that you
8 needed more time to prepare.

9 MR. HASWELL: No, I'm sorry; I made a mistake.

10 MS. JOHNSON: It's the bottom of paragraph 12,
11 actually, the end of it.

12 MR. HASWELL: That's right. It was right above
13 paragraph 13.

14 COMMISSIONER CLARK: I didn't take it that that being
15 a basis for the continuance. I just thought the continuance
16 was because of the Staff's interrogatory request.

17 MR. HASWELL: Commissioner, that was simply an
18 additional point. Our main concern right now is because of the
19 volume of work that our staff has been required to do, at least
20 two of whom are also witnesses in the case, they're out
21 preparing maps and getting data instead of getting ready for
22 the case.

23 In addition, as Mr. Badders and Mr. Stone and I were
24 discussing this, we realize we have 11 witnesses. I think they
25 have five and we have six. And our concern was whether we

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1 could get through that number of witnesses in two days. We
2 don't think it's highly likely, but the real, the main concern
3 right now is that while we are responding to and still working
4 on the maps that have been requested by Staff, that we're not
5 going to have sufficient time to, number one, complete that
6 process by next week and, number two, that even if we got all
7 that stuff done, let's say in the next day or two, that counsel
8 and the experts that both sides have would to have sufficient
9 time to review what we have filed.

10 COMMISSIONER CLARK: Okay. Staff, you did look into
11 when we could postpone this to; didn't you?

12 MS. JOHNSON: Yes, I did. Commissioner Clark, if I
13 might just comment on the information that Staff has requested.

14 COMMISSIONER CLARK: Yes.

15 MS. JOHNSON: We requested information with respect to
16 the distribution facilities in 13 areas. We asked for the date
17 that the distribution facilities were installed, as well as
18 costs information, the number of customers served by those
19 facilities, et cetera.

20 It's been our understanding up until this point that
21 part of that request that was causing the difficulty was with
22 respect to the historical information. I have reason to
23 believe that perhaps that may not be correct. Gulf Power
24 company filed all of their information absent the historical
25 data on last Friday, January 31st. And I received a letter

1 from Gulf Coast, Mr. Haswell. And he indicates in that letter
2 that they can't respond to the request until -- They estimate
3 that they can respond by March 3rd. Perhaps you'd like for him
4 to comment on that.

5 COMMISSIONER CLARK: I guess I'm not clear what you're
6 asking. We still want all the information; is that correct?

7 MS. JOHNSON: Right.

8 PRHEARING OFFICER CLARK: Okay.

9 MS. JOHNSON: I guess the question is whether or not
10 we would be receiving all of the information from Gulf Coast on
11 the date that they will represent today.

12 COMMISSIONER CLARK: Mr. Haswell.

13 MR. HASWELL: My information, of course, comes from
14 the folks. I believe that we do have the same information
15 available today. Now, they were working on it Friday.
16 Actually I think I got that information from them Thursday. I
17 believe we have that information short of the historical data
18 on the maps and the drawing of the maps themselves ready right
19 now; is that right?

20 Okay. We should be able to file that within the next
21 day or two.

22 COMMISSIONER CLARK: Okay. So for both Gulf Coast and
23 Gulf Power Company, it's the historical information we're
24 waiting on?

25 MS. JOHNSON: Yes.

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1 COMMISSIONER CLARK: Okay. And Gulf Power has
2 indicated they need 90 days to get that information?

3 MR. STONE: Commissioner, that is our best estimate,
4 as we're getting into the process of working on that. Of
5 course, originally when we first identified the issue, in my
6 conversations with Ms. Johnson, at that time we estimated 100
7 working days. Approximately 20 working days or 15 working days
8 have passed since that first conversation and we're still
9 working on that same deadline. So, when we stated 90 days last
10 Monday as an update, we're basically at 85 today.

11 I would also point out that the engineer that we
12 describe in our letter, who has been dedicated this task, his
13 attention was devoted to those other interrogatories virtually
14 all of last week. And so we have not made a great deal of
15 progress on the historical information to date. We have
16 factored all of that in in our estimate of the time frame.

17 COMMISSIONER CLARK: Ms. Johnson, did you look at any
18 times we could extend this hearing to?

19 MS. JOHNSON: Yes.

20 COMMISSIONER CLARK: And what did you come up with?

21 MS. JOHNSON: The Commission calendar can accommodate
22 a hearing on March 13th and March 14th with the current panel
23 being Clark, Deason and Johnson.

24 COMMISSIONER CLARK: Uh-huh.

25 MS. JOHNSON: There were also dates in September.

1 There were no dates available until September. And those dates
2 were September 2nd and 3rd with a panel of Clark, Deason and
3 Garcia; and September 29th and 30th with Clark, Garcia and
4 Johnson.

5 COMMISSIONER CLARK: I'm not inclined to want to
6 extend this and have a different panel than the panel that
7 served on the original case. So, it looks like the March 13th
8 and 14th date is what's available.

9 MR. STONE: Commissioner, I understand that. The
10 difficulty we have is the information that is being sought will
11 not be ready by that date. This issue, with regard to this
12 data that was requested, came up late in the process. In fact,
13 the questions were proposed after the Direct Testimony had
14 already been filed, and, in fact, if I remember the time frame
15 correctly, about the same time that Rebuttal Testimony was
16 being filed. I'm not finding fault with the timing of that,
17 but that is one of the reasons why we are focusing all this
18 effort at this stage of the proceeding rather than preparing
19 for the hearing.

20 COMMISSIONER CLARK: Let me ask Gulf Coast a question.
21 When do you expect to get the information?

22 MR. HASWELL: By March 3rd. We can be ready by March
23 13th and 14th.

24 COMMISSIONER CLARK: Staff.

25 MS. JOHNSON: The interrogatories were served on

1 December 13th. It's my recollection that Rebuttal Testimony
2 was due on December 20th. The responses would have been due
3 January 17th. It was not until approximately the first week in
4 January that Staff was notified that there was some difficulty
5 in responding.

6 COMMISSIONER CLARK: When was that you were notified?

7 MS. JOHNSON: The first week in January.

8 COMMISSIONER CLARK: Okay. I don't view that as very
9 unreasonable; probably just took some time to figure it out.

10 MS. JOHNSON: Probably because of the holidays.

11 MR. STONE: I don't know what to say other than the
12 fact that if this information is valuable to the Staff, it
13 certainly warrants putting the effort in to get the information
14 correctly. We are committed to doing that based on Staff's
15 request. And we've had some discussions making sure that they
16 understood the magnitude of the effort we were having to
17 undertake and they have still indicated to us they desire the
18 information.

19 COMMISSIONER CLARK: Well, let's do this. Let's
20 continue it until March 13 and 14 and let you, Mr. Stone, get
21 with your client and see if you can't sharpen your pencil a
22 little bit more to how much time you do need and then maybe
23 Staff, you can keep in touch with Staff and see if there is
24 some way to get the information you need in a less onerous way.
25 And what I would ask Staff -- Go ahead.

1 MS. JOHNSON: I'd just like to comment that Staff
2 narrowed the area down to 13 areas.

3 COMMISSIONER CLARK: You narrowed them from your first
4 interrogatories?

5 MR. STONE: No, that is what the first set of
6 interrogatories requested was 13 areas.

7 MS. JOHNSON: It was narrowed from the data request
8 that was initially submitted after the first phase of the
9 proceeding. And the information that we're seeking is
10 historical information. It's our position that if the
11 Commission wishes to consider first presence as an issue in the
12 case of concern, that this information would be necessary.
13 However, if the Commission feels that that's not a concern,
14 then the information would not be necessary.

15 COMMISSIONER CLARK: How do you propose we find that
16 out before the hearing? I mean, I assume Staff believes it's
17 important and that's why you've asked for the information and
18 made it an issue, made it part of what you think needs to be
19 developed.

20 MS. JOHNSON: Right. It's been something that's been
21 important in past cases. That's the basis for our asking for
22 it at this time.

23 COMMISSIONER CLARK: I don't have the authority on my
24 own to continue the hearing. Have you talked with the
25 Chairman?

1 MS. JOHNSON: I have not, but it was my understanding
2 that Mr. Stiles intended to do so.

3 COMMISSIONER CLARK: Okay. That's probably where the
4 dates developed.

5 MR. STONE: Commissioner Clark, I learned this morning
6 that if in fact March was a potential hearing date, that we
7 have some difficulty accommodating some of our witnesses'
8 schedules in March. I don't know the degree to which that
9 difficulty will become a factor, but it may be that one or more
10 of our witnesses.

11 COMMISSIONER CLARK: Who?

12 MR. STONE: I know that Mr. Holland has a conflict in
13 mid March I believe that corresponds with the dates that you've
14 just identified for us. And I'm not sure that he's in a
15 position today to tell us whether or not that can be changed,
16 his conflict can be altered.

17 COMMISSIONER CLARK: All right. Who besides
18 Mr. Holland?

19 MR. STONE: I'm not certain about the other witnesses.
20 I believe that -- Well, all I can do is consult with the other
21 witnesses to find out what their other engagements are.

22 COMMISSIONER CLARK: Well, when you first found out
23 that there may be a problem, that it may be moved to March, who
24 did you initially identify as potentially having a problem?

25 MR. STONE: I heard today that we're talking about

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1 March and Mr. Holland told me today.

2 COMMISSIONER CLARK: Okay.

3 MS. JOHNSON: I believe that those dates, the time
4 frame was mentioned earlier. I think I spoke with Mr. Badders
5 last week.

6 MR. STONE: It very well could have been,
7 Commissioner; we've had conversations back and forth with
8 various different people in an effort to try and get the most
9 information out. I'm not faulting anyone for giving me that
10 date in any thing other than a timely fashion. All I'm
11 suggesting to you is that we have not had a chance to determine
12 whether or not those dates can be accommodated on existing
13 calendars.

14 COMMISSIONER CLARK: Well, what I will recommend to
15 the Chairman is that we look at the 13th and 14th dates because
16 there just is nothing nearby that that panel is available for.
17 I would suggest that if it becomes clear that it's still going
18 to be a problem, Staff, you need to come to me and you need to
19 come to the Chairman. I will simply recommend to the Chairman
20 that we continue the hearing to the dates in March at this
21 point.

22 Now, do we -- Should we continue with the Prehearing
23 Conference? And my thought is we can go ahead and go through
24 the Prehearing Order and get it resolved and maybe not have to
25 have another Prehearing Conference unless there are any changes

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1 to it. I know it's a bit unusual to do it this far in advance.

2 MS. JOHNSON: I can't think of any reasons not to do
3 it, unless there are motions that are filed between now and
4 then, of course.

5 COMMISSIONER CLARK: But we don't necessarily hold a
6 Prehearing Conference to resolve motions.

7 Mr. Stone.

8 MR. STONE: We are prepared to go forward with the
9 Prehearing Conference.

10 May I ask for one point of clarification?

11 COMMISSIONER CLARK: Yes.

12 MR. STONE: Given your recommendation, may we safely
13 assume that we will not be going to hearing next week?

14 COMMISSIONER CLARK: I think so. Maybe I should
15 send -- I thought Mr. Stiles was down here, but if somebody on
16 the Staff could go see and check with the Chairman's office and
17 make sure that they don't have any -- that that will be
18 acceptable to them.

19 Shall we go ahead and go through the two, the Motion
20 to Compel and the Motion for -- Now, the Motion to Strike,
21 you've indicated we should take that up prior to the hearing, I
22 mean, when we first --

23 MS. JOHNSON: When the hearing is adjourned -- not
24 adjourned -- but called to order.

25 COMMISSIONER CLARK: Called to order. Is that the way

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1 we have dealt with it? When somebody files a motion early on
2 to strike testimony, I think the Prehearing Officer has dealt
3 with it.

4 MS. JOHNSON: Unfortunately, Mr. Elias walked out of
5 the room. I was operating on his instructions in that regard.
6 I can comment on and make general recommendations today, if
7 you'd like.

8 COMMISSIONER CLARK: Let me just check.
9 Mr. Haswell, do you have any -- What is your recollection of
10 Commission practice?

11 MR. HASWELL: I've heard it done both ways. Several
12 times we have made the argument at the prehearing conference
13 and the prehearing officer deferred ruling on it until the full
14 panel.

15 In this case we would greatly appreciate a ruling from
16 the Chair, if we can get one, so that we know how many -- We
17 could eliminate a bunch of witnesses if the Commission were to
18 rule favorably on the motion. In addition, if the testimony of
19 one of the witnesses is stricken entirely, three of our
20 witnesses may not need to show up.

21 COMMISSIONER CLARK: Mr. Stone.

22 MR. STONE: Notwithstanding the coercive influence of
23 that type of argument, we believe that it has been done --

24 COMMISSIONER CLARK: I don't know that it's coercive;
25 it's attractive.

1 MR. STONE: It's all in the eyes of the beholder.

2 Commissioner, it has been done both ways in my
3 experience. Actually, more often than not it's been my
4 experience that it's been decided by the panel rather than by
5 the prehearing officer.

6 With regard to -- I don't know if you want to hear
7 arguments on the merits of the motion at this stage or not.

8 COMMISSIONER CLARK: Okay. No. Let's go to the
9 Motion to Compel. Certainly that's something I can resolve.
10 Okay. And it is Gulf Coast's Motion to Compel.

11 MR. HASWELL: Yes, ma'am.

12 COMMISSIONER CLARK: Let me hear from you on that.

13 MR. HASWELL: Our Motion to Compel essentially is a
14 speaking motion, but in reference to the first interrogatory
15 that Gulf Power in our view did not answer, we ask in paragraph
16 3-B of Gulf Coast First Set of Interrogatories to please state
17 why Gulf Power Company did not include maps, the map numbers
18 referenced as areas where the facilities of the two utilities
19 were co-mingled, crossed or in close proximity. And Gulf Power
20 essentially did not answer the question. In other words, they
21 deferred to Staff on that issue.

22 COMMISSIONER CLARK: Mr. Haswell, let me interrupt you
23 just for a minute and confer with my aide.

24 (Brief pause.)

25 COMMISSIONER CLARK: Okay. I'm sorry,

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1 Mr. Haswell, go ahead.

2 MR. HASWELL: After further review and in light of
3 some of the testimony from the depositions, we withdraw our
4 request regarding 3-B.

5 Regarding Interrogatory 14, Commissioner, one of the
6 issues in this case is a position by or one of the positions of
7 Gulf Power in this case is that there is no need to construct
8 any facilities unless there is an immediate request for
9 service. Interrogatory No. 14 goes to the planning process,
10 which we believe is critical and forms the basis for the
11 drawing of territorial boundaries, so the two utilities can
12 plan efficiently and properly.

13 All paragraph 14 is doing is asking Gulf Power whether
14 or not it speculated on further growth of service in the Sunny
15 Hills development when it constructed its facilities there and,
16 in answering, please state what criteria, calculations and data
17 conclusions were used in determining to extend its facilities.

18 And their answer is no, they do not speculate on
19 further growth but rather rely on reasonable planning
20 assumptions.

21 In their answer they say they rely on reasonable
22 planning assumptions. And it's kind of to us is double speak.
23 What are those reasonable planning assumptions? The impression
24 they're trying to give us is that they don't do any planning;
25 they just respond to immediate request for service.

1 COMMISSIONER CLARK: You want them to give what their
2 planning assumptions are?

3 MR. HASWELL: Yes, ma'am.

4 COMMISSIONER CLARK: Okay.

5 MR. STONE: Commissioner Clark.

6 COMMISSIONER CLARK: I'm going to go through all of
7 these and then I'll hear from you.

8 MR. STONE: It might be easier to have argument on
9 each individual interrogatory that's subject to the Motion to
10 Compel.

11 COMMISSIONER CLARK: Why? Are you going to agree to
12 some of them?

13 MR. STONE: No, but the arguments are different for
14 each individual one. That was the only suggestion that it
15 might be responsive in that fashion; whichever your preference
16 is.

17 COMMISSIONER CLARK: I'm keeping track of the
18 arguments and when Mr. Haswell has concluded, I'll hear from
19 you.

20 MR. HASWELL: Thank you. Our motion regarding
21 interrogatory 15 is essentially the same regarding Leisure
22 Lakes. And, again, what we're looking for is what they
23 themselves referred to as reasonable planning assumptions in
24 determining criteria, calculations, data and conclusions they
25 used in extending facilities to serve Leisure Lakes.

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1 Regarding interrogatory 31, Gulf Power has referred to
2 a phrase called "least cost of service" and has indicated in at
3 least one of their witnesses' testimony that the Commission has
4 a policy of determining territorial disputes on least cost of
5 service. Now, we've asked them to identify documents, policies
6 or orders of the Commission where that was done. And their
7 answer basically is go find it yourself.

8 Maybe I'm stupid, but I haven't been able to find a
9 phrase that says least cost of service is the issue or a policy
10 adopted by the Commission. And all we are looking for is maybe
11 they could just point to one of them. You know, if there's 50
12 or they think there's 60 out there, if I just find one of them,
13 I could look at it. I quite frankly don't think it exists.

14 On interrogatory 32, Mr. Holland referred to certain
15 methods on page 9, line 24, of his Direct Testimony, about
16 handling territorial disputes or territorial issues, service
17 issues as an alternative to drawing lines in the ground. So we
18 ask him to identify and describe those in detail. And he says
19 basically look at Mr. Spangenberg's and Mr. Weintritt's
20 testimony.

21 Well, I guess we're prepared to withdraw our objection
22 to that if Gulf Power would say that the only methods that he's
23 referring to and the only methods Gulf Power has ever
24 considered must be found within Spangenberg's and Weintritt's
25 testimony and there are no others.

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1 On interrogatory 42 we were directing our inquiry to
2 issue No. 7 of the seven issues that this hearing is going to
3 address. No. 7 is where should the territorial boundary be
4 established. It seems logical to us that we should ask Gulf
5 Power where the territorial boundary should be established and
6 what they based that on.

7 And we also asked, we preface it on the basis that
8 assuming the Commission were to resolve this dispute by drawing
9 detailed geographical delineations, which is euphemistically
10 stated for lines on the ground, and essentially they refused to
11 answer it.

12 The reason -- Well, Gulf Coast has responded to that
13 issue. We'd like to come to the hearing prepared and know what
14 Gulf Power's position is on where a line should be drawn.

15 That concludes my remarks regarding our motion.

16 COMMISSIONER CLARK: Mr. Stone.

17 MR. STONE: With regard to interrogatory responses 14
18 and 15, the interrogatory question asks us did we speculate on
19 future growth in those two areas. We answered that question
20 directly, no. We did provide what I guess in some respects
21 might be classified as dicta with regard to our next sentence
22 in our response where we talk about we don't engage in
23 speculation; we engage in reasonable planning assumptions.

24 We then answer the next part of his interrogatory:
25 What did we rely upon? We relied upon the direct request of

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1 the developer.

2 So he has gotten an answer to his interrogatory.

3 Did we speculate? No. What did we rely upon?

4 Receipt of a request from the developers.

5 With regard to his argument now today that what he's
6 seeking is our reasonable planning assumptions, that is not
7 what he asked for. And while that sentence is in our response,
8 it was mainly to take issue with his concept of speculation.

9 With regard to how we're planning to serve that
10 development today is not relevant to that question. His
11 question was remote in time, talking about what did we know
12 then, if you will.

13 So, I don't -- I fail to see how we've been
14 unresponsive to the question and his effort to enlarge the
15 question today should be denied.

16 With regard to interrogatory --

17 COMMISSIONER CLARK: Any objection to responding what
18 your reasonable planning process is with respect to Sunny Hills
19 or Leisure Lakes?

20 MR. STONE: For today? I mean, what our reasonable
21 planning process is today, given the fact that we have
22 facilities in place?

23 COMMISSIONER CLARK: Or what your process was back
24 then.

25 MR. STONE: Well, if he's changing his question, then

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1 we will have to go back and evaluate how to answer that
2 question, but that is not what we saw the question being today.
3 I don't know whether or not we can answer historically what
4 were the planning assumptions that went into place 30 years ago
5 when Sunny Hills was developed. And with regards to Leisure
6 Lakes, as the Commission is aware, we were told we couldn't
7 serve it, so we're not serving it.

8 MR. HASWELL: Commissioner, procedurally --

9 COMMISSIONER CLARK: Mr. Haswell, I'm hearing from Mr.
10 Stone right now. Go ahead, Mr. Stone.

11 MR. STONE: With regard to interrogatory No. 31, it
12 has always been my understanding take the realm of legal
13 research is one for lawyers to engage in, not through
14 discovery. And that is essentially what the question asks for.
15 If Mr. Haswell, through his legal research, comes to a
16 different conclusion than we have, he's free to argue that to
17 the Commission, but for us to have to do his legal research for
18 him I think is beyond the scope of appropriate discovery.

19 With regard to interrogatory No. 32, the reference
20 that Mr. -- that the interrogatory makes to Mr. Holland's
21 testimony, to put that in context, the statement says, "As
22 evidenced by the several suggested alternatives or
23 modifications to the current procedure which we make in our
24 testimony, we recognize that other methods do exist for the
25 resolution of disputes between electricity providers."

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1 We thought we were being responsive when we referred
2 him to the other proposals that we have made.

3 COMMISSIONER CLARK: I'm sorry. Mr. Stone, you read
4 something that I don't have in front of me.

5 MR. STONE: The interrogatory refers to Mr. Holland's
6 Direct Testimony at page 9, line 24.

7 COMMISSIONER CLARK: Right.

8 MR. STONE: And I was simply putting the clause that
9 they refer to on line 24 in context by reading the sentence as
10 it begins on line 22.

11 COMMISSIONER CLARK: All right. And read it to me.

12 MR. STONE: "As evidenced by the several suggested
13 alternatives or modifications to the current procedure which we
14 make in our testimony, we recognize that other methods do exist
15 for the resolution of disputes between electricity providers."

16 COMMISSIONER CLARK: Okay.

17 MR. STONE: Those other methods that he's referring to
18 are in the testimony of Mr. Weintritt and Mr. Spangenberg and
19 are also discussed in a general fashion in Mr. Holland's
20 testimony. We thought we were being responsive.

21 COMMISSIONER CLARK: All right. I think what he's
22 asked is is that all you are relying on as all such methods, I
23 suppose that's known to Georgia Power Company. Is that all you
24 are relying on in terms of methods? I would assume it is,
25 since you've answered look at that testimony.

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1 MR. STONE: In the context of that sentence, that's
2 what he was referring to. Now is he asking about other
3 methods? I don't -- did not understand the question to be
4 asking anything other than what was he referring to in his
5 testimony at that juncture.

6 COMMISSIONER CLARK: Okay.

7 MR. STONE: By the way, I believe in this context, the
8 GPC refers to Gulf Power Company instead of Georgia Power
9 Company.

10 COMMISSIONER CLARK: Thank you.

11 MR. STONE: And with regard to interrogatory No. 42,
12 once again, we believe our answer is responsive. He's asking
13 us to deliver something which we don't have. We have not
14 developed a lines on the ground proposal. And, in fact, the
15 thrust of our testimony is that such a proposal is not
16 appropriate.

17 COMMISSIONER CLARK: Mr. Haswell, do you want to
18 respond?

19 MR. HASWELL: Yes, ma'am. Thank you, Commissioner.

20 Referring briefly to 14 and 15, our question was two
21 sentences long. Regardless of whether they answer yes or no to
22 the question did they speculate, we asked them to please state
23 the criteria, calculations, data and conclusions that were used
24 in extending the facilities to serve. And that is referencing,
25 of course, prior to constructing the facilities to serve Sunny

1 Hills and Leisure Lakes. And that's very clear. We're not
2 changing the question. We just want the question answered.

3 In paragraph -- excuse me -- in 31, with all deference
4 to Mr. Stone's and Mr. Badders' skills as legal researchers, I
5 don't think I should rely on theirs anyway even if they did it
6 for me. But, they use the word "policy." And I believe the
7 Commission has a policy manual or at least statements of policy
8 have been issued. That's all -- I haven't seen it. I have
9 never seen one that said least cost of service.

10 If they're telling us now that this is a conclusion
11 that they have reached from all the various territorial dispute
12 orders that have been entered, then I can understand their
13 answer. But if they're saying that there is a policy out
14 there, there is an order of the Commission or there's a written
15 policy of the Commission on least cost of service, I want to
16 know what order number, what case they're referring to.

17 And in 32, our question really was all such methods
18 known to Gulf Power Company. We didn't just say the methods of
19 Mr. Spangenberg and Mr. Weintritt. We want to know all such
20 methods. Now, again, I can take some comfort if they're saying
21 all such methods and only those in Mr. Spangenberg's and
22 Mr. Weintritt's testimony, then we have no problem with that.

23 Forty-two perhaps is the most important question to
24 us, because, again, it goes to an issue of where should the
25 territorial boundary be established. And, quite frankly, it's

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1 this: They're saying they're not going to draw a line. They
2 don't believe a line on the ground should be drawn. We don't
3 want to show up at a hearing or somewhere between now and the
4 hearing date and get a late-filed exhibit or have someone on
5 cross examination, if we were then to ask where should that
6 line be drawn, and one of them answer the question.

7 I guess we're looking at are they going -- they're
8 telling us now that they will never, between now and the
9 hearing date and at the hearing they are not going to propose,
10 they haven't drawn a line, they have no knowledge of where a
11 line should be.

12 COMMISSIONER CLARK: Mr. Stone, is that, as
13 representing Gulf Power, is your position going to be that no
14 line should be drawn and you will not be proposing where that
15 line should be drawn if the Commission decides that's what we
16 would like to do?

17 MR. STONE: Commissioner, it is no question that it is
18 our position that no such line should be drawn.

19 COMMISSIONER CLARK: Okay.

20 MR. STONE: I will further represent to the Commission
21 that we do not have a line on the drawn proposal today to give
22 in response to this interrogatory. I do not mean to foreclose
23 the possibility that in the interest of preparing for the
24 hearing we may at some point develop one between now and the
25 hearing, but one does not exist today. We have not developed

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1 one and I can't say that we have any plans to develop one. But
2 for me to represent to you today that we will not draft one is
3 not something that I have the authority to do.

4 COMMISSIONER CLARK: Okay.

5 MR. HASWELL: That causes us a serious problem. We
6 have submitted one on behalf of Gulf Coast for them to take
7 pock shots at at the hearing and yet they're basically telling
8 us now that they might do one themselves.

9 MR. STONE: I'm saying is we haven't, but the hearing
10 is not today. And between now and the hearing date --

11 COMMISSIONER CLARK: Mr. Stone, how would you propose
12 to get that evidence in the record?

13 MR. STONE: Well, that would be a problem for us to
14 deal with. I don't mean to imply to you that we have one, that
15 we're going to wait and we're going to develop one on the eve
16 of the hearing and we're going to float one out there; that's
17 not what I mean to imply at all.

18 I'm simply saying that the way the question was
19 phrased, it was to say I either have to have one today or I can
20 never have one, and I don't know that that's what the public
21 interest requires me to have to say today. But, regardless,
22 the point that I'm making today is we do not have one today; I
23 have nothing to give. And we've stated that in our answer.

24 We have stated our philosophy, why we haven't
25 developed one today. You know, if the Commission ultimately

1 decides that that's the route it's going to take, we certainly
2 will want to participate in the drawing of that line, but we
3 believe and we have stated throughout this proceeding, we
4 believe it is a mistake and we are steadfast in our position on
5 that regard.

6 MR. HASWELL: Commissioner, we ask basically the kinds
7 of things that Mr. Stone referred to as 42-C. If they're not
8 going to draw a line, please -- If they don't detail a line or
9 describe one, then state whether and under what conditions they
10 would.

11 MR. STONE: If we're ordered to, we will. I don't
12 know how to make it more clear.

13 COMMISSIONER CLARK: I understand, Mr. Stone.

14 Let me go back to items number 14 and 15. Now I
15 understood -- Mr. Haswell, clarify again for me what is it
16 you -- Your view is that when you said speculate, that the
17 second part of that wasn't to be limited to whether or not they
18 had in fact speculated, but you just wanted information about
19 the criteria, calculations, data and conclusions that were used
20 in determining whether to extend Gulf Power's facilities in
21 Sunny Hills; that's what you're asking for?

22 MR. HASWELL: Yes, ma'am.

23 COMMISSIONER CLARK: Mr. Stone, is there any problem
24 in getting that information?

25 MR. STONE: I'm sorry; I need to again understand:

1 Are we talking about as it existed when the decision was made
2 to go into Sunny Hills in 1972?

3 COMMISSIONER CLARK: I understood that to be the
4 question.

5 MR. HASWELL: It says right in there prior to
6 constructing.

7 MR. STONE: The answer to that question is that we
8 made our decision to extend facilities to serve that
9 development based on receipt of a request from the developers.
10 That is the answer to the question. He's asking what did we
11 rely on in making that determination; that's what we relied on.

12 COMMISSIONER CLARK: You relied on nothing beyond
13 their request to serve?

14 MR. STONE: That is what I understand the facts to be.

15 COMMISSIONER CLARK: All right. I think you have got
16 14 and 15 answered then.

17 MR. HASWELL: Okay. Thank you.

18 COMMISSIONER CLARK: I'm going to reserve judgment on
19 31. I do have a concern about whether or not it is asking for
20 legal research information. I want to look at that further and
21 consult further with my staff.

22 Now let's go to No. 32. I do believe it said -- It
23 references -- While it references the testimony, it says
24 "Please identify and describe in detail all such methods." I
25 assume that's known to Gulf Power.

1 MR. HASWELL: Right; yes, ma'am.

2 COMMISSIONER CLARK: All right. Now is your answer
3 complete that what is in the testimony of
4 Mr. Spangenberg and Mr. Weintritt is the extent of the methods
5 known to Gulf Power Corporation?

6 MR. STONE: May I consult with the witness?

7 COMMISSIONER CLARK: You may.

8 (Brief pause.)

9 MR. STONE: Commissioner Clark, I am reminded by the
10 witness that this same question or a variant of this question
11 was asked at Mr. Holland's deposition and he responded to the
12 question. Certainly, when we answered the interrogatory back
13 on December 16th, we took it in the context of the sentence as
14 it was in his testimony and we believe that our answer is
15 responsive to that.

16 If the question is is Gulf Power Company aware of
17 other methods of resolving territorial disputes, certainly we
18 are aware of other methods and we have listed. We couldn't
19 possibly give you an all-inclusive list, but in terms of the
20 context of the question that is in the context of the testimony
21 that Mr. Holland has proffered to this Commission, the answer
22 was responsive.

23 And, furthermore, further discovery has been granted
24 to the Cooperative and they have asked the question at
25 deposition and had ample opportunity to follow up on it. I'm

1 not sure what more that we need to do. If we are asked to give
2 an inventory of every method that Gulf Power Company is aware
3 of that could be used to resolve a territorial dispute, we
4 would endeavor to do such. I'm not sure what value that has.
5 And I would certainly take issue with whether the fact that is
6 what was being asked by this question when it was initially
7 propounded.

8 COMMISSIONER CLARK: Well, Mr. Stone, as I read it, it
9 says, "Please identify and describe in detail all such methods
10 known to Gulf Power Company." I take that as going beyond Mr.
11 Holland's testimony. Now, you've indicated -- I appreciate the
12 fact that you may not have.

13 MR. STONE: Well, I was only going by when it said
14 "with reference to his testimony." That's what we were keying
15 off on. If we made a mistake in that, I apologize, but
16 certainly that's the way we interpreted the question and I
17 think that's a reasonable interpretation to apply.

18 COMMISSIONER CLARK: I agree with you, but that's not
19 how I interpret it. And my question to you now is have you
20 answered anywhere else all methods known to Gulf Power?

21 MR. STONE: Off the top of my head I don't know that
22 we have listed all methods known to Gulf Power.

23 COMMISSIONER CLARK: Okay. Well, let me ask it a
24 different way. Mr. Haswell, are you interested in all the
25 methods on which they intend to rely in this proceeding or do

1 you want all methods known to Gulf Power Corporation?

2 MR. HASWELL: Obviously just the ones they intend to
3 rely on.

4 COMMISSIONER CLARK: Okay. Mr. Stone, what methods do
5 you intend to rely on? Is it just the ones in the testimony?

6 MR. STONE: Yes.

7 COMMISSIONER CLARK: Okay. I think you have your
8 question answered.

9 MR. HASWELL: Thank you.

10 COMMISSIONER CLARK: With respect to the question on
11 where the line should be drawn, I do have some concern that our
12 proceedings are not designed to be a trial by ambush. It's
13 okay with me if you don't intend to offer any suggestion as to
14 where to draw the line, if you wish to simply take the position
15 that no line should be drawn. But I don't think that -- There
16 is at some point that I think you forego the right to bring
17 forward where that line should be drawn.

18 MR. STONE: Commissioner, we do not intend --

19 COMMISSIONER CLARK: At least with respect to this
20 proceeding.

21 MR. STONE: We do not intend to -- At this point we do
22 not intend to sponsor a witness in that regard, but I do not
23 wish to be precluded from addressing that issue on cross
24 examination. And I think that that would be appropriate if in
25 part of challenging a line that has been proffered by one party

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1 for the other party, to test that line through cross
2 examination. And I hope that the indication that you have
3 given us would not be intended to preclude that opportunity.

4 COMMISSIONER CLARK: Well, I'm going to leave this
5 pending, but I guess I'm inclined to indicate that I do believe
6 that you can test the validity of what is offered on cross
7 examination, but to the extent you would endeavor to put
8 forward a new line and ask that witness how about this, I think
9 that's trying to supplement your case and I would have grave
10 concern about that.

11 I'm going to reserve ruling on it and talk to the
12 Staff, but I'm just telling you what my thoughts are. It may
13 be that if you intend to use any documents on cross examination
14 or if you intend to proffer a line on cross examination, that
15 you would have to provide that prior to the hearing.

16 MR. STONE: I think I understand your ruling and I
17 just want to first assure you it is not our intention to engage
18 in trial by ambush.

19 COMMISSIONER CLARK: Okay.

20 MR. STONE: We believe that we have fairly and
21 accurately responded to the discovery that's been propounded
22 and we will live within our responses.

23 I just -- The way I heard the question being phrased
24 today, it sounded as though it was more than just asking for
25 what we've done to date. It's asking for something that

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1 speculatively may or may not be done in the future and I can't
2 know what the future holds. I know what we're planning and I
3 think I have addressed that.

4 COMMISSIONER CLARK: All right. As I understand it,
5 we have resolved 14 and 15. You have gotten even your answer,
6 as well as 32. I will discuss further with Staff a ruling on
7 31 and 42.

8 MR. HASWELL: Thank you.

9 COMMISSIONER CLARK: Now it has just been indicated to
10 me that it looks like we can give you another month and a half;
11 that it looks like April 29th and 30th are available and it has
12 the same panel. And the Chairman has indicated it is
13 acceptable to her to move the dates and it's acceptable to her
14 to either use March 13th and 14th or April 29th and 30th.

15 MR. STONE: Commissioner, I believe that we have a
16 much more realistic chance of being able to provide the
17 responses to discovery by April 29th and 30th.

18 COMMISSIONER CLARK: Okay.

19 MR. STONE: And I believe that gives us a much more
20 likely opportunity to resolve any conflicts we have with
21 witnesses.

22 COMMISSIONER CLARK: Okay. Mr. Haswell.

23 MR. HASWELL: I don't have my calendar with me. What
24 days of the week are those?

25 MS. JOHNSON: Tuesday and Wednesday.

1 MR. HASWELL: That should be all right.

2 COMMISSIONER CLARK: Okay. Then we will go ahead and
3 continue the hearing until the 29th and 30th, but I still am
4 inclined to go over the Order and see if we can get that done
5 so we don't have to meet again.

6 Let me make it clear, if something comes up, that we
7 do need to get together again, we'll do it, but I'm not sure it
8 will.

9 I have a revised draft.

10 MS. JOHNSON: It's dated February 3rd.

11 COMMISSIONER CLARK: Yes, it is.

12 MR. STONE: Is that the same draft that we have?

13 MS. JOHNSON: Yes.

14 MR. STONE: We have it only as a draft, not a revised
15 draft.

16 COMMISSIONER CLARK: I have a handwritten "revised" on
17 it.

18 Ms. Johnson, would it be appropriate to just ask --
19 Have the parties had an opportunity to look at the Order?

20 MR. STONE: We have, briefly. I mean, we got it when
21 we came in today.

22 PRHEARING OFFICER CLARK: Okay.

23 MR. STONE: I have -- I'm assuming that our positions
24 were taken from the disc and so that they would be accurate.
25 We have noted some issues that we need to address today with

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1 regard to the order of witnesses.

2 COMMISSIONER CLARK: Mr. Haswell, have you had an
3 opportunity to look at it?

4 MR. HASWELL: We just got it when we walked in, so I
5 haven't had a chance to review it.

6 MS. JOHNSON: I'd point out that there were just three
7 issues where positions for Staff were included that were not
8 included in our Prehearing Statement and point those out to the
9 parties. Those are issues 1, 6 and 7.

10 COMMISSIONER CLARK: So the previous draft they got is
11 the same except for those positions and you've included an
12 update of the parties' positions?

13 MS. JOHNSON: No. Staff's positions in our Prehearing
14 Statements are somewhat different than the positions that are
15 reflected here.

16 MR. STONE: I am somewhat confused. The position that
17 Staff has taken on 1 and 7 is essentially no position at this
18 time.

19 MS. JOHNSON: It's just with the qualifier that it's
20 pending receipt of discovery and we have a position for
21 issue 6.

22 MR. STONE: I did see the position on issue 6.

23 MS. JOHNSON: Okay.

24 COMMISSIONER CLARK: Why don't we just take ten
25 minutes and review it and then we'll go back on the record and

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1 see if we have to make any changes to it.

2 MR. STONE: Thank you.

3 (Brief recess.)

4 COMMISSIONER CLARK: Mr. Haswell, are you ready?

5 MR. HASWELL: Yes, ma'am.

6 COMMISSIONER CLARK: Mr. Stone, are you ready?

7 MR. STONE: I believe so.

8 COMMISSIONER CLARK: Mr. Haswell, are there any
9 changes we need to make to the Prehearing Order at this time?

10 MR. HASWELL: I've identified two changes. One is on
11 page 5, our witness, Stephen Page Daniel, will be addressing
12 issues 3 to 7 instead of 1 to 7.

13 COMMISSIONER CLARK: Okay.

14 MR. HASWELL: And in our basic position, in the sixth
15 line I think the word "that" should be stricken; where it says
16 "duplication may occur, that . . ." If you strike the word
17 "that," I think it grammatically makes sense.

18 COMMISSIONER CLARK: Okay. Anything else?

19 MR. HASWELL: No.

20 COMMISSIONER CLARK: Okay. Mr. Stone.

21 MR. STONE: In the order of witnesses, we had
22 identified in our prehearing statement an order of witnesses
23 that we would prefer to follow with regard to our witnesses
24 both on Direct and Rebuttal that is somewhat different than
25 what is put down here in the Prehearing. And I can give that

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1 to you now.

2 COMMISSIONER CLARK: All right.

3 MR. STONE: And I'm just looking at our witnesses.

4 Mr. Holland would be our first witness on Direct.

5 COMMISSIONER CLARK: Okay.

6 MR. STONE: Mr. Klepper would be our second witness on
7 Direct. And I believe that we had Mr. Weintritt as our third
8 witness. I'm sorry. I went from memory and it just occurred
9 to me I ought to check something real quick.

10 Mr. Weintritt was our third witness on Direct and
11 Mr. Spangenberg was our fourth witness on Direct.

12 COMMISSIONER CLARK: Okay.

13 MR. STONE: On Rebuttal, we started out with our first
14 Rebuttal witness being Mr. Pope, followed by Mr. Spangenberg,
15 followed by Mr. Weintritt, followed by Mr. Klepper and ending
16 up with Mr. Holland.

17 COMMISSIONER CLARK: Okay.

18 Mr. Haswell, do you have any changes to make to your
19 order of witnesses?

20 MR. HASWELL: If I may have just a brief minute.

21 COMMISSIONER CLARK: Staff, do you have any objection
22 to that order of witnesses?

23 MS. JOHNSON: No.

24 COMMISSIONER CLARK: Okay. Was there any -- Is it
25 appropriate to discuss doing Rebuttal and Direct at the same

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1 time?

2 MR. STONE: We would prefer not to, Commissioner.

3 I would also point out that normally the party that
4 proceeds first on Direct proceeds last on Rebuttal and that
5 seems to be at variance from what you have listed here.

6 COMMISSIONER CLARK: Staff.

7 MS. JOHNSON: We have no objections to it.

8 MR. HASWELL: Commissioner, on Gulf Coast's order of
9 witnesses, we would prefer starting with Mr. Daniel, then
10 Mr. Dykes, on rebuttal.

11 MR. FLOYD: Direct is okay.

12 COMMISSIONER CLARK: Direct is okay?

13 MR. HASWELL: Direct is okay; starting with Daniel and
14 then Gordon. We have no problem with that.

15 COMMISSIONER CLARK: Okay.

16 MR. HASWELL: On Rebuttal, starting with Daniel and
17 then Dykes and then Cockey, Hedberg, Pratt and Gordon.

18 COMMISSIONER CLARK: And, Mr. Haswell, Mr. Stone has
19 indicated his preference is, and he believes the Commission
20 practice is that your Rebuttal would proceed his Rebuttal.

21 MR. HASWELL: Procedurally I'm not sure if we have a
22 problem with that, but initially the Petitioner in this case
23 was Gulf Power on the initial complaint. However, the request
24 for phase 2 was Gulf Coast, which the Commission agreed with.
25 We could argue that we should go first and have Rebuttal last.

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1 COMMISSIONER CLARK: Uh-huh.

2 MR. HASWELL: I'm not sure. We'd prefer to do it that
3 way.

4 COMMISSIONER CLARK: You would be first on your Direct
5 case and last on your Rebuttal?

6 MR. HASWELL: Yes, ma'am.

7 COMMISSIONER CLARK: Mr. Stone.

8 MR. STONE: This is the first I've heard that they
9 finally acknowledge that they were -- that this second phase
10 was based on their request. I guess that means they have the
11 burden of proof. And if that is the case, then certainly we
12 concur with that order.

13 COMMISSIONER CLARK: Mr. Haswell.

14 MR. HASWELL: That's fine with us.

15 COMMISSIONER CLARK: All right. Then we will have
16 Gulf Coast witnesses go first on Direct and then Gulf's
17 witnesses, then Staff. On rebuttal, it will be Gulf's
18 witnesses and then Gulf Coast witnesses in the order just
19 indicated.

20 Vicki, I assume you have those written down.

21 MS. JOHNSON: Yes, I do.

22 COMMISSIONER CLARK: Okay. Is there anything else
23 with respect to the Prehearing Order we need to take up at this
24 time?

25 MS. JOHNSON: I would like to, if I may.

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1 COMMISSIONER CLARK: Go ahead.

2 MS. JOHNSON: Commissioner Clark, in light of the fact
3 that there is still some information that is currently data
4 requests and interrogatories that responses are currently
5 outstanding and that the hearing has been continued until
6 April, Staff would just like to ask that we have the
7 opportunity to reflect additional positions before the issuance
8 of the Prehearing Order. The Prehearing Order is currently
9 scheduled to be issued February 6th, which is Thursday.

10 COMMISSIONER CLARK: Uh-huh. Why don't we not issue
11 the Prehearing Order then, but set a date that we will issue
12 the Prehearing Order that's an appropriate amount of time prior
13 to the hearing and any changes to the Prehearing Order will
14 have to be identified a week before that Order is issued.

15 MR. STONE: That is fine with us.

16 COMMISSIONER CLARK: And, also, at any time that it's
17 discovered that we need to get back together, you need to get a
18 hold of me so that we can schedule that.

19 Does that sound like it will work?

20 MS. JOHNSON: Yes.

21 COMMISSIONER CLARK: Okay. Anything else,
22 Ms. Johnson?

23 MS. JOHNSON: Yes, we need to I think establish date
24 certain for responding to our interrogatory requests.

25 COMMISSIONER CLARK: Okay.

1 MS. JOHNSON: I know that currently the parties have
2 agreed to provide certain information to us with respect to
3 outage times on February 5th. There are late-filed deposition
4 exhibits that perhaps we can talk about after the prehearing
5 conference, but with respect to the discovery, the date the
6 distribution facilities were installed, I think that at least
7 with respect to Gulf Power they've indicated that they need an
8 additional 85 days. That would take us right up to the date of
9 the continued hearing dates. That would not provide enough
10 time for Staff to review it and for the parties to review it in
11 time for the hearing.

12 COMMISSIONER CLARK: Do you have a proposed date?

13 MS. JOHNSON: April 8th.

14 COMMISSIONER CLARK: Mr. Stone.

15 MR. STONE: I didn't hear the date. I'm sorry.

16 COMMISSIONER CLARK: April 8th.

17 MR. STONE: Commissioner, all I can say is that we
18 will strive to do that, but we have given our best estimate as
19 to the amount of work that's entailed and certainly if we can
20 shorten that, we are going to take every effort to shorten it
21 and get it and beat that date by as much as possible. If we
22 are unable to meet that date, I would like the opportunity to
23 come back to the Commission and explain why.

24 COMMISSIONER CLARK: We will set that date that the
25 information must be filed by that date and you will have to

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1 file a motion to extend the period of time if you can not meet
2 that date. And I don't know if we need to do an order, but let
3 me make it clear to the extent that you can get it done -- I
4 guess my direction should be as soon as possible, no later than
5 April 8. And if you find that it is for some reason necessary,
6 you will have to file a motion asking for an extension of that
7 time.

8 MR. STONE: That is understood.

9 COMMISSIONER CLARK: Okay. Anything else,
10 Ms. Johnson?

11 MS. JOHNSON: Yes. There has been some -- I think --
12 Staff thinks that there should be a definite and finite end to
13 discovery.

14 COMMISSIONER CLARK: I agree.

15 MS. JOHNSON: That only the responses to our
16 interrogatories would be filed on April 8th. Currently the
17 parties have been operating under the agreed upon date of
18 January 31st for discovery to be complete, but we'd like to
19 define a definite ending date.

20 COMMISSIONER CLARK: I thought the joint motion
21 addressed further discovery.

22 MR. HASWELL: Yes, ma'am; it did. We agreed that we
23 would -- That if there was any additional discovery, it would
24 only be directed to the information that we are preparing to
25 file.

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1 COMMISSIONER CLARK: What -- Which -- Can you be more
2 specific?

3 MR. HASWELL: The Staff interrogatories.

4 COMMISSIONER CLARK: All right.

5 MR. STONE: Commissioner, we believe that, both
6 parties believe that once each side has answered these
7 historical, this historical data, that we ought to have the
8 opportunity to do further discovery of each other with regard
9 to that information, not that we would but we'd like to have
10 that opportunity if necessary.

11 COMMISSIONER CLARK: Okay. Then all discovery except
12 with respect to the information Staff has requested is ended;
13 is that correct? It's already ended?

14 MR. HASWELL: That's correct.

15 MS. JOHNSON: It's already ended, yes.

16 COMMISSIONER CLARK: Okay. That's acceptable to me.
17 Does that change in any way the April 8th date? I don't
18 suppose so. That will still give you enough time.

19 Okay. I think that's acceptable.

20 Anything else?

21 MS. JOHNSON: I can't think of anything else.

22 COMMISSIONER CLARK: Mr. Haswell.

23 MR. HASWELL: No.

24 COMMISSIONER CLARK: All right. Just so I'm clear,
25 we're going to hold on to the Prehearing Order, but it will be

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1 issued at an appropriate time prior to the April 29th and 30th
2 hearing. Staff may make changes -- Did we set a date? Maybe
3 we should set a date as to when it should go out.

4 MS. JOHNSON: The hearing is currently scheduled for
5 April 29th. I think that one week prior to the hearing.

6 COMMISSIONER CLARK: Okay. And what is that date?

7 MS. JOHNSON: April 22nd.

8 COMMISSIONER CLARK: All right. The Prehearing Order
9 will be issued. If you have any changes to make to the
10 Prehearing Order, you need to get it in by --

11 MR. STONE: According to that schedule April 15th,
12 which is a date I think we can all remember.

13 COMMISSIONER CLARK: Oh, okay. April 15th.

14 Okay. I will do an order on the Motion to Compel that
15 deals with interrogatories 31 and 42.

16 With respect to the Motion to Strike the Testimony,
17 Ms. Johnson, is it your recommendation that we leave it for the
18 hearing?

19 MS. JOHNSON: That was my recommendation, Commissioner
20 Clark. Again, I was relying upon direction from Mr. Alias. I
21 have comments and I can address those today if the parties
22 would like to make argument on their motions, on the motion
23 itself.

24 MR. HASWELL: It would be our preference if the matter
25 was going to be decided at the conference by the full panel,

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1 that we prefer deferring our argument until that time.

2 COMMISSIONER CLARK: I'm inclined at this point to
3 leave this motion pending and be further advised by the Staff
4 as to the way we have treated it in the past, so that I get a
5 clear indication of what our policy is and the reasons pro and
6 con for doing it. If I think it would be beneficial to have me
7 rule on it, I will not do that prior to giving the opportunity
8 to hear from parties.

9 MR. STONE: Thank you.

10 COMMISSIONER CLARK: I think that concludes
11 everything.

12 MS. JOHNSON: Yes.

13 COMMISSIONER CLARK: Thank you very much. This
14 prehearing is adjourned.

15 MR. STONE: Thank you, Commissioner.

16 (The proceedings were concluded.)

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COURT CERTIFICATE

STATE OF FLORIDA

COUNTY OF LEON

I, Cathy H. Webster, Registered Professional Reporter,
certify that I was authorized to and did stenographically
report the foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

DATED this 16th day of February, 1997.



Cathy H. Webster
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