

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

CLERK, SUPREME COURT

By _____
Deputy Clerk

In the Matter of

DOCKET NO. 93089

Petition to resolve territorial
dispute with Gulf Coast
Electric Cooperative, Inc. by
Gulf Power Company.



SECOND DAY - MORNING SESSION

VOLUME 3

Pages 314 through 487

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK

DATE: April 30, 1997

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

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1 **ADDITIONAL APPEARANCES:**

2 **MARTHA BROWN, FPSC, Division of Legal**
3 **Services, on behalf of the Commission Staff.**

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1 happy to work out the logistics of that, presumably
2 with your staff.

3 **COMMISSIONER DEASON:** Let me ask -- I
4 appreciate that. I asked the question because I
5 didn't know exactly what type of procedural problems
6 it may create and the logistics involved.

7 I have had a meeting with Staff this
8 morning. They've indicated it is certainly
9 permissible, and I would just ask that the parties
10 meet together with Staff and see what the options are
11 and what logistics do need to be worked out, and then
12 we can pursue it from there.

13 **MR. STONE:** I'd be happy to do that.

14 **CHAIRMAN JOHNSON:** Very well. Gulf?

15 **MR. STONE:** Chairman Johnson, our next
16 witness is Mr. Ted Spangenberg.

17 **CHAIRMAN JOHNSON:** Has the witness been
18 sworn?

19 **MR. STONE:** Yes.

20 **CHAIRMAN JOHNSON:** And are there any
21 witnesses here today that have not been sworn?

22 **MR. STONE:** None on behalf of Gulf. They
23 were all sworn yesterday.

24

25

1 I guess I should say Gulf Power, and I'll
2 try to remember to do that in the future.

3

- - - - -

4

THEODORE S. SPANGENBERG, JR.

5 was called as a witness on behalf of Gulf Power
6 Company and, having been duly sworn, testified as
7 follows:

8

DIRECT EXAMINATION

9

BY MR. STONE:

10 Q Would you please state your name and
11 occupation for the record?

12 A My name is Ted Spangenberg. I'm the
13 residential marketing manager for Gulf Power Company.

14 Q Are you the same Ted Spangenberg who
15 prefiled direct testimony in this proceeding dated
16 October 15, 1996?

17 A Yes, I am.

18 Q Do you have any changes or corrections to
19 your prefiled direct testimony?

20 A No, I do not.

21 Q If I were to ask you the questions contained
22 in that prefiled direct testimony, would your
23 responses be the same?

24 A Yes, they would.

25 Q Did you have any exhibits attached to your

1 prefiled direct testimony?

2 **A** No, I did not.

3 **MR. STONE:** We would ask that
4 Mr. Spangenberg's prefiled direct testimony dated
5 October 15, 1996 be inserted into the record as though
6 read.

7 **CHAIRMAN JOHNSON:** It will be so inserted.

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GULF POWER COMPANY

Before the Florida Public Service Commission
Direct Testimony of
Theodore S. Spangenberg, Jr.
Docket No. 930885-EU
Date of Filing: October 15, 1996

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Q. Please state your name, business address, and occupation.

A. My name is T. S. (Ted) Spangenberg, Jr. My business address is 500 Bayfront Parkway, Pensacola, Florida. I am employed by Gulf Power Company as their Residential Marketing Manager.

Q. Please summarize your educational and professional background.

A. I hold Bachelor's and Master's degrees in Electrical Engineering from Auburn University. I have worked for Gulf Power Company and its affiliates within the Southern Company for the past 20 years. My experience during that time frame includes positions and direct work involvement in the areas of load research, market research, demand forecasting, cogeneration, customer service, line service, distribution field engineering, transmission, executive administration, substation engineering, and residential marketing.

1 Q. What is the purpose of your testimony?

2 A. The purpose of my testimony is to describe a method that
3 could be used by the Florida Public Service Commission
4 (the Commission) to establish territorial boundaries
5 between Gulf Power Company (GULF) and Gulf Coast
6 Electric Cooperative (GCEC). This method factors in the
7 capabilities of existing electric service facilities and
8 the economics of facilities expansion.

9

10 Q. If the Commission mandates the establishment of
11 territorial boundaries between GULF and GCEC consisting
12 of specific and detailed geographic delineations (i.e.
13 "lines on the ground"), where should those lines be
14 located?

15 A. Different types of loads require different types of
16 capabilities and facilities for providing adequate and
17 reliable electric service. Therefore, a territorial
18 boundary consisting of "lines on the ground" would have
19 to be established for each of several different types of
20 loads. While performing this feat with precise accuracy
21 would require fashioning it for many more types of loads
22 and with variations for different geographic
23 characteristics, for the sake of simplicity and ease of
24 administration I would suggest only six. I will refer
25 to them as Category 1, Category 2, etc.

1 Category 1 type loads are those that are likely to
2 require, at a minimum, major revisions to the bulk power
3 transmission system. Specific size loads would have to
4 be determined for the various transmission lines in the
5 area, but would generally be those in the range of 50 MW
6 or so and above. The territorial boundaries for these
7 and all other loads should be established such that the
8 difference in the amount that one utility would have to
9 spend to serve these loads and what the other utility
10 would have to spend would be no more than a "de minimus"
11 amount. Detailed studies would have to be conducted to
12 determine precise distances, but, generally, territorial
13 boundaries should be established such that each utility
14 would be allowed to serve any Category 1 load having a
15 service point that is located within several miles of
16 any of that utility's 230 kV and higher voltage
17 transmission facilities.

18 Category 2 type loads are those that are likely to
19 require the construction of a new substation but not
20 require major revisions to the transmission system.
21 These loads would typically be in the range of 10 MW to
22 50 MW, although the top end of this band would vary
23 depending upon the capabilities and limitations of the
24 transmission system in a particular area. Again, the
25 concept of a "de minimus" difference in cost to serve

1 should be applied. While, once again, detailed studies
2 would need to be conducted to determine more precise
3 distances, the territorial boundaries for these loads
4 should be established such that each utility would be
5 allowed to serve any Category 2 load having a service
6 point that is located within several miles of any of
7 that utility's existing transmission or sub-transmission
8 lines.

9 Category 3 type loads are those that are likely to
10 require that a new three-phase distribution feeder be
11 constructed from an existing substation that is capable
12 of serving the additional load. These loads would
13 typically be in the range of 3,000 to 10,000 kW. Again,
14 the "de minimus" approach should apply and calculations
15 be performed with the territorial boundaries for these
16 loads established such that each utility would be
17 allowed to serve any Category 3 load having a service
18 point that is located within several miles of any of
19 that utility's existing distribution substations.

20 Category 4 type loads are those that would not
21 require the construction of a new feeder but are likely
22 to require the construction of an extension of or a
23 service drop from an existing three-phase distribution
24 feeder. These loads would generally be in the range of
25 50 kW to 3,000 kW. The territorial boundaries for these

1 loads should be established such that each utility would
2 be allowed to serve any Category 4 load having a service
3 point that is located within several thousand feet of
4 any of that utility's existing three-phase distribution
5 facilities, with a more precise distance determined
6 through appropriate costing studies.

7 Category 5 type loads are those that are likely to
8 require the construction of an extension of or a service
9 drop from a two-phase (minimum) distribution line.
10 These loads would require 3-phase secondary service, but
11 would have small enough 3-phase motor loads that they
12 could be served by an open-delta transformer bank
13 supplied by a 2-phase primary line. They would
14 generally be in the range of 10 kW to 50 kW. The
15 territorial boundaries for these loads should be
16 established such that each utility would be allowed to
17 serve any Category 5 load having a service point that is
18 located within several thousand feet of any of that
19 utility's existing two-phase or three-phase primary
20 distribution lines.

21 Category 6 type loads are those that would require
22 the construction of a service drop from or an extension
23 of a single-phase (minimum) distribution line.
24 Therefore, the territorial boundaries for these loads
25 should be established such that each utility would be

1 allowed to serve any Category 6 load having a service
2 point that is located within one thousand feet of any of
3 that utility's existing primary (4 kV or above)
4 distribution facilities.

5

6 Q. Would the establishment of territorial boundaries using
7 these criteria result in some overlapping areas for GULF
8 and GCEC for each of the categories?

9 A. Yes, it would. It is my understanding that the Florida
10 Supreme Court has established that some level of
11 expenditure by one utility in excess of what another
12 utility would have to spend is not necessarily
13 "uneconomic." Given the current locations of each
14 party's facilities, there are going to be some loads at
15 some locations that either party could serve without the
16 occurrence of uneconomic duplication. It is my
17 understanding that the purpose of this proceeding is to
18 establish territorial procedures or mechanisms such that
19 uneconomic duplication of facilities is prevented. If
20 the mechanism prescribed is one of detailed geographical
21 delineations, the method I have described accomplishes
22 that prevention purely on the basis of economics.

23 The method I have described could be altered to
24 establish exclusive areas based on an equidistance or
25 other criteria for facilities with similar capabilities,

1 but such a process would ignore the definition of
2 uneconomic duplication as recently clarified by the
3 Florida Supreme Court. Additionally, such a method
4 would still require, on the basis of economics,
5 overlapping territories for different types of services
6 or loads, though not for the same type of service or
7 load.

8 If an intent is to establish territorial boundaries
9 in the form of specific geographical delineations such
10 that no uneconomic duplication is likely to occur, the
11 territorial boundaries should be established as I have
12 described. The distances from the existing facilities
13 for each Category would be calculated and defined such
14 that any construction cost difference between the two
15 utilities is "de minimus" with respect to the total cost
16 to serve that particular Category of load in the areas
17 of overlapping boundaries. Using this approach, any
18 prospective customer that is locating within overlapping
19 territories for the appropriate Category of load should
20 be allowed to choose between the two electric service
21 suppliers.

22

23 Q. Using this method, would there be areas that might not
24 be included in either utility's assigned territory?

25 A. Yes, in the low customer density area that is the

1 subject of this docket this could occur for one or more
2 of the various load categories I have described.
3 Naturally, in these instances a new customer locating in
4 such an area should be afforded the opportunity to
5 choose an electric service supplier, assuming that both
6 utilities are willing to serve and/or both have an
7 obligation to serve. In any instance in which the
8 customer can be afforded an initial choice of provider,
9 the customer can consider the long term economic impact
10 of their decision and act accordingly. Should GULF
11 offer to serve and should the customer select GULF to
12 provide such service, the customer would then have the
13 benefit of competitive rates, full regulatory
14 protection, and the availability of our residential and
15 commercial rate options and our expert residential and
16 commercial energy conservation and management
17 assistance.

18

- 19 Q. Would the process that you have proposed for setting
20 territorial boundaries require the establishment of six
21 different sets of boundaries?
- 22 A. Yes, it would, and this is necessary when you accept the
23 reality that, if the likelihood of the occurrence of
24 uneconomic duplication is to be significantly diminished
25 through geographical location criteria, then those

1 geographical criteria should be established with respect
2 to the nature of the load in question. The wholesale
3 tariff provisions that were in effect between GULF and
4 GCEC for many years accomplished this with a single
5 distance specification accompanied by a load size
6 criteria. With respect to specific power delivery cost
7 parameters relative to different sizes and nature of
8 loads, that method was rather simplistic and inexact,
9 but it avoided the complexities and inflexibility of
10 specific geographical boundaries for every hill and
11 hollow of Northwest Florida. The method I have
12 proposed is clearly superior to a single set of lines or
13 other process that would assign electric service rights,
14 for example, to a 35 MW industrial complex in the year
15 2002 based on the location of single phase distribution
16 primary in 1996.

17

- 18 Q. Would the graphical depiction of the territorial
19 boundaries utilizing your proposed process require six
20 different sets of maps?
- 21 A. Yes, most likely. The mapping of the territories could
22 be accomplished using some type of overlapping color
23 codes on a single set of maps, but, for ease of
24 understanding, six different sets of maps would probably
25 be most workable. There would be a set of maps for each

1 Category of load. When service to a particular customer
2 was in question, each utility would simply look at the
3 set of maps that matched that Category of load to
4 determine whether it was allowed to provide service to
5 that particular customer. If either utility could
6 provide service without uneconomic duplication of the
7 other utility, the customer would be afforded the
8 opportunity to make a one-time selection of their
9 electric service provider based on electricity prices,
10 reliability of service, power quality, or other
11 characteristics to which that particular customer might
12 assign value.

13

14 Q. Once these maps were initially established, would they
15 require revision in the future?

16 A. Absolutely. Anytime you establish territorial
17 boundaries as specific geographical delineations and
18 these boundaries are established on the basis of the
19 location of existing facilities, you must make
20 provisions for the future construction of necessary
21 facilities. While this might not be an issue in areas
22 of this state where there is already a relatively high
23 density of power delivery facilities, it is certainly an
24 issue in the areas that are under consideration in this
25 particular proceeding, that is, areas where the customer

1 density is relatively low. Changes that will occur as
2 additional facilities are constructed would need to be
3 addressed by an annual or biannual update of the
4 existing facilities mapping, followed by an update of
5 each of the six load Category sets of boundary maps and
6 a subsequent filing and approval proceeding with this
7 Commission and other interested parties. Any process
8 that uses "lines on the ground" would regularly and
9 frequently require direct Commission involvement to make
10 adjustments for additional facilities. This would,
11 obviously, require more frequent Commission activity
12 with regard to territorial boundaries and issues than
13 the current process has required over the last ten
14 years.

15 Again, let me point out that it is not my position
16 that the method that I have proposed is the best process
17 for avoiding uneconomic duplication of electric service
18 facilities; however, it is my position that this method
19 is the best if specific and detailed geographic
20 delineations are mandated.

21

22 Q. Does this conclude your testimony?

23 A. Yes, it does.

24

25

1 Q (By Mr. Stone) Mr. Spangenberg, would you
2 please summarize your testimony?

3 MR. FLOYD: Chairman Johnson, thank you for
4 a second here. I did want to ask in light of the
5 extensive summaries -- I know that you weren't here
6 yesterday for that -- but there were extensive
7 summaries given, and in light of that, I would like to
8 ask -- and we will do the same for ours -- in the
9 interests of procedure and time, to limit those to
10 just that which is on the testimony that's been
11 prefiled and certainly somewhat shorter than that.
12 Thank you.

13 CHAIRMAN JOHNSON: Gulf?

14 MR. STONE: I believe that's what we did,
15 but certainly we understand Mr. Floyd's concerns.

16 CHAIRMAN JOHNSON: Very well.

17 WITNESS SPANGENBERG: Good morning,
18 Commissioners. Neither Gulf Power Company nor this
19 Commission like uneconomic duplication to occur,
20 because it means somebody's money has been needlessly
21 spent.

22 The phrase, "uneconomic duplication," in and
23 of itself implies that there are economic factors to
24 consider in the construction of electric utility
25 facilities to be used to provide service to new

1 customers. The most significant of those factors
2 include the distance of line extensions, the nature of
3 the load to be served and the capabilities of existing
4 facilities.

5 These factors interact in so complex a
6 manner that the elimination of uneconomic duplication
7 through the establishment of a territorial boundary is
8 impossible.

9 If, however, territorial boundaries are to
10 be established in spite of their inability to preclude
11 uneconomic duplication, the establishment of those
12 boundaries must consider, to the best of anyone's
13 ability, each and every one of the significant
14 economic factors that I cited a moment ago.
15 Otherwise, the folly of uneconomic duplication is
16 increased, rather than diminished.

17 My testimony presents a method of
18 establishing territorial boundaries that considers
19 each of those factors. The method results in six sets
20 of boundaries, one for each major type of load or
21 facilities expansion requirement.

22 Category 1 is for loads requiring a major
23 revision to the transmission system, and would result
24 in a boundary established on the basis of a calculated
25 distance from each utility's 230,000 or higher voltage

1 facility.

2 Category 2 is for loads requiring a new
3 distribution substation, and would result in a
4 boundary established on the basis of a distance from
5 each utility's transmission or subtransmission
6 facilities.

7 Category 3 is for loads requiring a new
8 three-phase distribution feeder, and would result in a
9 boundary established on the basis of a distance from
10 each utility's distribution substations.

11 Category 4 is for loads requiring a
12 modification to an existing three-phase feeder, and
13 would result in a boundary established on the basis of
14 a distance from each utility's three-phase
15 distribution facilities.

16 Category 5 is for loads requiring only a
17 modification to an existing two-phase line, and
18 consequently would result in a boundary established on
19 the basis of a distance From each utility's two-phase
20 or three-phase distribution lines.

21 Finally, Category 6 is for loads requiring
22 only a modification to an existing single-phase line,
23 and would result in a boundary established on the
24 basis of a distance from each utility's primary
25 distribution facilities.

1 In order for this method or any other method
2 to prevent only uneconomic duplication, there will be
3 some overlapping areas where either utility could
4 economically serve because of a de minimis difference
5 in the factors between the two utilities.

6 Likewise, there could be some areas where
7 neither utility is initially assigned an area for a
8 particular load category. In either instance a
9 one-time customer choice of the utility to provide
10 service should be allowed.

11 The method I propose would require six
12 different sets of maps to be prepared, one to depict
13 each of the six different load categories. These
14 maps, as with any other maps to depict any type of
15 territorial boundary, will require periodic updates
16 and revisions to reflect facilities that have been
17 constructed or removed by each utility.

18 I know of no method for establishing a
19 territorial boundary such that economic duplication --
20 uneconomic duplication is going to be properly
21 avoided, much less eliminated. In fact, there are
22 many simplistic methods that could be used drawing a
23 single boundary line that actually cause uneconomic
24 duplication rather than avoiding it, thus increasing
25 cost to the consumers of Florida.

1 forecasting of growth or load, does it?

2 A No, it does not.

3 Q You didn't do any research into territorial
4 agreements or resolving territorial boundary disputes
5 in other states or other methodologies in coming up
6 with your six-category proposal for allocating
7 service, did you?

8 A No, I did not. In fact, what I did was
9 simply -- was take my extensive knowledge of what it
10 requires to serve load, based on both my transmission
11 and my distribution prior experience, use those in
12 applying economic factors to determine, you know, what
13 made sense in terms of assigning territory.

14 Q But in looking into what would be an
15 appropriate territorial boundary or territorial
16 process, would not you think it would be relevant to
17 look at other territorial boundary agreements or other
18 territorial means of resolving disputes in other
19 jurisdictions?

20 A I can see where that would have some
21 relevance, yes. And, in fact, knowing that all the
22 other boundaries, territorial boundaries that I was
23 familiar with, were based on just a simple, single
24 line on the ground regardless of the character of the
25 facilities, in essence, those were considered in

1 thinking about how many times those lines could, in
2 fact, cause an economic duplication rather than
3 prevented them; frankly, I rejected all those that I
4 was familiar with.

5 Q You're not aware of any expert in the
6 electrical utility industry that has promoted this
7 six-category allocation of territory before you?

8 A No, none before me.

9 Q Okay. And to your knowledge, no public
10 service commission, state legislature or governmental
11 authority has ever adopted such a six-category plan as
12 you propose here?

13 A No, not to my knowledge. We felt like it
14 was time to advance the field of knowledge in this
15 area.

16 Q So this basically was a unique idea that you
17 came up with by yourself without the benefit of any
18 research with other state jurisdictions, correct?

19 A No, that's not correct. As I stated
20 earlier, I did consider other types of territorial
21 boundaries, rejected them because of their follies and
22 fallacies, and instead opted to advance one that gave
23 greater consideration and proper consideration to all
24 the various economic factors that should be
25 considered.

1 Q Didn't I ask you that question in your
2 deposition and your answer was that it was correct,
3 Mr. Spangenberg?

4 A If I remember the context and nature of your
5 question in the deposition, it was related to the
6 extensiveness of those studies and how many others
7 that I had studied, and certainly I have not gone to
8 every state jurisdiction and studied all types of
9 territorial boundaries that exist.

10 Q Let me point you to your deposition that was
11 taken January 14th, 1996, Page 100, Line 16 through
12 19, and ask you if I asked you this question, or you
13 were asked this question and you gave this answer.
14 Are you at that point?

15 A I am at that point, yes, sir.

16 Q "Question: So this was a unique idea that
17 you came up with by yourself without the benefit of
18 any research with other state jurisdictions?"

19 "Answer: That's correct."

20 Is that the question and the answer that you
21 gave?

22 A Yes, it is.

23 Q Thank you.

24 A And I might add that the question there was
25 phrased in terms of other state jurisdictions and,

1 frankly, the ones I am most familiar with are those
2 that I'm aware of through, I guess, my knowledge with
3 this Commission in terms of where they have approved
4 an agreement between two utilities in this state where
5 there has been a single boundary regardless of load
6 criteria.

7 Q Mr. Spangenberg, when you were at that
8 deposition, did anybody limit the amount of time or
9 response that you could give to an answer -- or to a
10 question that was asked of you?

11 A No, sir. I don't recall anybody saying I
12 had to limit the length of my answer in that
13 deposition.

14 Q Well, nobody said you had to answer it
15 within a certain amount of time, right?

16 A No, sir, they sure didn't.

17 Q And do you recall -- excuse me -- let me
18 rephrase that. And you don't recall having served as
19 a witness or been involved in a territorial dispute
20 case other than that you were an engineer who
21 engineered the services to provide power to the
22 Leisure Lakes for Gulf Power; is that correct?

23 A Yes. To the best of my recollection, that
24 is correct.

25 Q Now, under your proposal for allocation of

1 territory involving these six different categories of
2 maps or grids, the first category that you use -- in
3 the first category you have proposed the use of a
4 20-mile radius for Category 1 loads, correct?

5 A No, sir, that is not correct.

6 Q And in your deposition when we asked you,
7 that was the area that you proposed a 20-mile radius,
8 was it not?

9 A No, sir, that's not correct.

10 Q In response to interrogatories, you
11 developed --

12 MR. STONE: Chairman -- I'm sorry. Never
13 mind.

14 Q (By Mr. Floyd) In response to
15 interrogatories, you developed some maps, or showing
16 the grids of these proposals, did you not?

17 A Yes, sir.

18 Q And in the first category the radius that
19 you used for showing the circle of those was 20-mile
20 radius under your first category, correct?

21 A Yes, that's correct. In response to
22 Interrogatory No. 38 in Gulf Coast Electric
23 Cooperative's first set of interrogatories, we were
24 asked to provide a set of sample maps; and in that
25 answer we simply submit this as an example -- we

1 give -- we state there that the 20 miles is only used
2 as an example for the purpose of illustrating the
3 method that would be used, and that the precise
4 distance that should be used would have to be
5 determined through some detailed studies.

6 Q Okay.

7 COMMISSIONER CLARK: Can we see that?

8 MR. FLOYD: I'm sorry?

9 COMMISSIONER CLARK: Do you have that?

10 MR. FLOYD: Yes. We have one set, and we
11 could mark that.

12 COMMISSIONER CLARK: Well, let me ask the
13 witness. Did you develop any maps for the territory
14 in question that comply with your categories?

15 WITNESS SPANGENBERG: Only this one sample,
16 Commissioner, and the purpose being, and the reason
17 being, as was discussed in deposition, was that really
18 before you'd want to apply such an extensive and
19 thorough method, you would want each, party with the
20 purview of the Commission, to consider and look at
21 what factors should be used, what -- you know, what
22 calculations and construction costs should be used in
23 determining those precise distances. Otherwise,
24 without having gotten some prior agreement between the
25 parties, you wouldn't want to go through the extensive

1 work that this thorough method requires without having
2 the parties to preliminarily agree on what distances,
3 et cetera.

4 **MR. FLOYD:** Commissioner Clark, we do have
5 other copies which we can submit to each of them, and
6 if you will, we'd like to just have this marked as the
7 next exhibit.

8 **CHAIRMAN JOHNSON:** We can mark this as
9 Exhibit 11. Short title? Do you have a short title
10 for the document?

11 **MR. FLOYD:** I would say six-category
12 proposal by Gulf Power.

13 **CHAIRMAN JOHNSON:** Six-category proposal by
14 Gulf?

15 **MR. FLOYD:** Gulf Power.

16 (Exhibit 11 marked for identification.)

17 **COMMISSIONER CLARK:** Mr. Spangenberg, I see
18 the legend on, say, the first one, and it shows blue
19 cross-hatching would be George -- Gulf Power Company,
20 and then it shows the red would be Gulf Coast. I only
21 see blue hatching on this map.

22 **WITNESS SPANGENBERG:** Yes, ma'am, and that's
23 proper for Map No. 1 which shows, I guess, Category 1,
24 because that's based on a distance from any
25 230,000-voltage facilities; for instance, major

1 transmission lines, those types of things. And, in
2 fact, Gulf Coast does not have any of those types of
3 facilities in Northwest Florida, so naturally you
4 would not see their --

5 **COMMISSIONER CLARK:** So in this territory,
6 at least for that kind of load, it's all Gulf Power's
7 territory.

8 **WITNESS SPANGENBERG:** Yes, ma'am, that's
9 correct. And I believe the same thing would occur for
10 Category 2. Once you get over to, I think, Categories
11 3, 4 and 5, then you begin to see both some blue and
12 some red cross-hatching, because Gulf Coast does have
13 some single-phase primary facilities. They just don't
14 have any transmission lines in the area.

15 **COMMISSIONER CLARK:** Well, let me ask you
16 this question. It strikes me as if your method is
17 really a method of allocating customers as opposed to
18 allocating territories.

19 **WITNESS SPANGENBERG:** And I would say this:
20 It's not inappropriate to characterize it that way,
21 the point being that any territory allocation must
22 consider the nature of the load the customer is
23 putting on you. Otherwise, you can't properly avoid
24 uneconomic duplication.

25 **COMMISSIONER CLARK:** Well, I was thinking

1 about it last night, and it just seems to me the
2 thrust of what Gulf Power is advocating is that there
3 shouldn't be an agreement to draw lines on the ground
4 or to allocate territory; there should be an agreement
5 to allocate customers, and that's the best way to
6 avoid uneconomic duplication. Is that a fair
7 assessment of your position?

8 **WITNESS SPANGENBERG:** Yes, ma'am, I believe
9 that's a fair assessment; an allocation of customers
10 that is again based on economic principles. Now, in
11 doing that allocation, you would need to say relative
12 to what types of facilities, and that might get you
13 into some distances from facilities.

14 But, yes, I believe that the concept that
15 we've advanced here could be done without ever drawing
16 a line on a piece of paper. You could do it relative
17 to certain types of customers and certain distances
18 from certain types of facilities.

19 **COMMISSIONER CLARK:** And let me ask you
20 this: Do the statutes requiring us to approve
21 agreements talk in terms of allocating customers or
22 allocating territory?

23 **WITNESS SPANGENBERG:** It uses the phrase
24 "territory," to the best of my knowledge. And the
25 issue gets back to, you know, does territory have to

1 be a distinct and defined line; and that's why in
2 advancing this method we did advance one that involved
3 lines on the ground, because we realized that that was
4 many people's interpretation of what the statutes and
5 rules require.

6 **COMMISSIONER CLARK:** What do you think the
7 plain meaning of territory is?

8 **WITNESS SPANGENBERG:** It would tend to be a
9 geographic representation, and that's why, again, we
10 tried to present these as geographic representations.
11 I tend to think of sales territories, if you will.
12 Does not necessarily mean exclusive territories. It
13 could be, you know, mutually inclusive territories,
14 such as my method with the overlapping areas we
15 depict.

16 **COMMISSIONER CLARK:** So it's your view that
17 the law doesn't require the exclusive allocation of
18 territory?

19 **WITNESS SPANGENBERG:** That's correct. And
20 certainly I'm not a legal authority, but I certainly
21 don't think it would preclude an assignment of
22 overlapping territories.

23 **COMMISSIONER CLARK:** Okay.

24 **MR. STONE:** Chairman Johnson, the exhibit
25 that Gulf Coast has handed out is an excerpt from

1 Gulf's interrogatory response, and I believe it would
2 be more appropriate to include as part of this exhibit
3 the cover sheet that goes with the interrogatory
4 response. And also I would like to make it clear that
5 this is not a proposed boundary by Gulf Power Company;
6 rather this is an example of a methodology cited by
7 Mr. Spangenberg in his testimony.

8 So I would like to supplement the handout by
9 the Co-op with the cover sheet from the interrogatory
10 response that makes reference to this exhibit, and I
11 will have to get copies for everyone later.

12 **CHAIRMAN JOHNSON:** Is there any objection to
13 the cover sheet being added to make the document
14 more -- I guess you are suggesting it would be more
15 accurate if we had that particular information?

16 **MR. STONE:** Yes. It takes it out of context
17 if you don't.

18 **MR. FLOYD:** Chairman Johnson, I think that
19 the maps speak for themselves as they relate to the
20 questions with the particular witness. I don't -- I
21 don't know what that -- I haven't read that particular
22 question in a little bit, for some time, and I think
23 that the questions we're relating it to deal with
24 these particular maps. And, of course, we've taken
25 his deposition on that, so I don't see any need to put

1 in the interrogatory question itself.

2 **CHAIRMAN JOHNSON:** So is that then -- are
3 you objecting to that being added?

4 **MR. FLOYD:** Yes.

5 **CHAIRMAN JOHNSON:** And your grounds would be
6 it's not relevant or it doesn't --

7 **MR. FLOYD:** It's not relevant.

8 **MR. STONE:** Chairman Johnson, I cannot
9 imagine how the question to which these maps were
10 delivered becomes irrelevant. That's the classic case
11 of taking something out of context and trying to
12 manipulate the information.

13 In order to get to the truth of the matter,
14 it would seem appropriate to have the Co-op's question
15 to which these were delivered in response.

16 **COMMISSIONER CLARK:** Could I see those
17 questions?

18 **MR. FLOYD:** I don't wish to elevate this to
19 any larger concern or significance than it is. That
20 would be something I think would be more appropriate
21 on his redirect, if he has it; but if they want to go
22 ahead and put it in, that's fine.

23 **CHAIRMAN JOHNSON:** Gulf Power, then, will
24 get copies for all of us, and we will have the exhibit
25 to include that cover sheet that included the

1 questioning to which these documents were attached.

2 MR. STONE: Thank you.

3 Q (By Mr. Floyd) Mr. Spangenberg, then these
4 first two maps, according to your proposal, would be
5 the exclusive territory of Gulf Power Company on 2633,
6 correct?

7 A Yes, that's correct, given the sample
8 distances cited in the interrogatory response.

9 Q And down at the bottom right-hand corner of
10 the first map of this Exhibit 11, it shows Category 1
11 printed on there, 20 miles, correct?

12 A Yes, that's correct; again, repeating that
13 sample distance.

14 Q And that is the distance that you used as
15 the extent of a de minimis line comparison for that
16 particular category, correct?

17 A Yes. For purposes of giving this example,
18 that sample distance was used. I must reemphasize
19 that that 20 miles was not arrived at through any
20 precise calculation. It was simply picked as an
21 example, which I believe is in the order of magnitude
22 that you would come up with when the proper
23 calculations are done.

24 Q But as you said, you haven't done any cost
25 studies to determine how far out that circle should be

1 or how closer in that it should be from the Gulf Power
2 facilities, correct?

3 A That's correct. And as again in response to
4 Commissioner Clark's questions, I believe it would be
5 inappropriate to enter into those types of proper
6 costing calculations without the involvement of all
7 parties. It does need to be a collaborative process
8 in which all those who would be impacted by it should
9 be involved.

10 Q And you don't know who -- if this proposal
11 would be accepted, you don't know who would perform
12 that calculation or how it would be done, correct?

13 A I am aware of how I think it should proceed
14 and the types of concepts that calculation should be
15 involved. The people who should be involved, I would
16 hope that Gulf Coast has experts in engineering that
17 they could advance to be involved in those
18 calculations. We certainly have folks -- capability
19 of doing that, and you'd want those to collectively be
20 involved.

21 Q At your deposition you stated you had not
22 given any thought as to who would do it or how it
23 would be done, didn't you?

24 A At that time I had not. In fact, since then
25 I have. And I think in the deposition I also

1 referenced the types of things you would consider, and
2 that is you would look at the distance sensitive type
3 costs versus those that are not distance sensitive,
4 knowing that if you don't have a distance sensitive
5 cost, that either party is going to have to spend
6 approximately the same amount, and then your costs for
7 distance sensitive costs become relevant to how far
8 each other's facilities are from a particular area.

9 Q And you agree that whenever -- whoever would
10 do -- or however they would do these de minimis
11 studies, cost studies, that the distance could be
12 anywhere from 10 miles to 30 miles for that particular
13 Category 1?

14 A Yes. I gave that as a range of
15 reasonableness at this time without those calculations
16 having been done. It is not, for instance, a thousand
17 feet or less. We are talking about a fairly large
18 distance when you're talking about a size load or a
19 type of customer that would require a major revision
20 to a transmission -- to the bulk transmission grid.

21 Q And with respect to the distances for the
22 radius used in the other maps in Exhibit 11 that we
23 have marked, those, likewise, were just something you
24 came up with because they were a nice round number,
25 correct?

1 A Yes, that's correct; although, again, as
2 pointed out in the deposition, while they are nice
3 round numbers for ease of conceptualizing the method,
4 I believe each of those, and particularly the relative
5 size of those numbers, I believe is not -- you know,
6 within reason.

7 Q Mr. Spangenberg, the de minimis cost that
8 you use as the factor for determining the length of
9 this radius, and consequently the largeness of the
10 circle from the point of your facility in the
11 proposal, that de minimis cost as you use it, the term
12 "de minimis" means basically that -- as you defined
13 it, that you're looking at a difference that's small
14 relative to the overall cost to serve or relative to
15 some benefits that's being derived, correct?

16 A Yes, that's correct.

17 Q And you admit that your proposals would
18 require revisions based on facilities which are added
19 in each map area, correct?

20 A Yes, that's correct.

21 Q Now, as each utility adds a facility in a
22 map area between the focal point of the circle where
23 the radius starts and the outer boundary, then the
24 outer boundary would be further expanded or extended
25 by that distance, correct?

1 A Yes, that's correct; and I believe that's
2 characteristic of any process that draws a line on the
3 ground based upon the existence of some facility. As
4 facilities change, the lines have to change, whether
5 you're doing that on the basis of some equadistance,
6 or a more thorough and thoughtful example, as I've
7 given here, of some fixed distance from certain type
8 of facility. Anytime you put lines on the ground for
9 whatever purpose, it's only proper to revise them as
10 facilities are revised.

11 Q So that as each utility added facilities and
12 its crosshatched area expanded, it's certainly
13 possible that over time every one of these maps could
14 end up being the entire service area of each utility,
15 correct?

16 A I guess, yes. That is an extreme, I think,
17 characterization. I really frankly doubt that that
18 would occur, particularly when you get down to the
19 smaller load type of categories. I believe that's
20 very unlikely. Nor do I expect that it would be --
21 you know, that it would be logical to think that Gulf
22 Coast is going to start building a major bulk
23 transmission system throughout Northwest Florida such
24 that their Category 1 map becomes totally red-hatched.

25 Q In fact, your Category 3 map is an example

1 of that where each utility would have the right to
2 serve anywhere in the confines of that map 2633,
3 correct?

4 A Yes, that's correct; and, again, that's
5 using the sample distance of five miles. If we
6 determine that the proper distance for that particular
7 map is, in fact, 1.9 miles, then you, in fact, might
8 not have every area crosshatched in both colors.

9 Q And Category 4 is another example where the
10 facilities are there right now, that each utility
11 would have the right to serve anywhere in that whole
12 area?

13 A Yes, that's correct. And if you'll recall
14 the type of load that we're talking about there and
15 given the 10,000 feet, I don't believe that's
16 unreasonable. Again, if that number happens to be
17 3,200 feet or 2,700 feet, I don't believe you would
18 find the entire area crosshatched.

19 Q Now, do you agree with the statement made by
20 Mr. Holland to the effect that in order to do this
21 right, you would have to have at least -- or
22 approximately 50 categories?

23 A Not necessarily. I think Mr. Holland was
24 recalling the fact that we have the six as a
25 simplistic number to give us an ease of administration

1 here. I do believe that this method could be much
2 more precise if you pick a larger number of
3 categories. Whether the number is 50 or 60 or 12, we
4 have not done that analysis. We wanted to wind up
5 with something that, frankly, was plausible in terms
6 of administrative burden.

7 If you want to be precisely accurate, you
8 know, you could take the great variety of types of
9 customers that each of us presently serve, for each
10 one of those, say, okay, let's take the definition of
11 de minimis and let's go through and calculate a
12 distance from the type of facility to take the survey;
13 and I would tell you that in that case the number
14 could almost become infinite.

15 Q But for each of these, say up to 50
16 different categories, each category would require a
17 different map, correct?

18 A It would certainly require the -- a
19 different definition of a distance. Whether or not
20 you might could overlay some of those on one map and
21 not have to have 50 maps and could get by with, say,
22 10 maps each of them showing five is certainly
23 possible.

24 Again, in a mapping process, I'm not sure it
25 would be wise to go with 50 categories. Once you're

1 at 50 categories, you're much more likely to come up
2 with a distance specification from a type of facility
3 rather than trying to map all of it. I believe that
4 could be done with my method.

5 You would not necessarily have to draw a
6 map. As Commissioner Clark suggested, you may simply
7 have a definition of a type of customer, a distance
8 from a type of facility, and would not have to map
9 anything. Who would want to fool with 50 sets of
10 maps? I mean, frankly --

11 Q Exactly --

12 A -- we've taken a reasonable approach to
13 this.

14 Q But you would agree that it could be
15 necessary, by virtue of the extension of facilities in
16 a particular area that would change the outer boundary
17 line, that you would have to redraw these, quote, "de
18 minimis lines," end quote, as much as once a year?

19 A If you took a map-drawing approach to
20 implement the method, yes, that is correct. I might
21 mention that the territories could also shrink. Some
22 facilities do get removed as, you know, customers move
23 away; and particularly with the manufactured home
24 concept that we see in play in the territory now in
25 this area of Florida, it's certainly possible you'd

1 have facilities, you know, picked up and removed, too.

2 Q Now, as to determining if a certain customer
3 fits within a certain category because of its load,
4 under your particular proposal is it correct that the
5 developer could be the one to determine that or even,
6 say, the utility could determine what category that it
7 feels that particular load falls in?

8 A Yes, certainly. This is a method that's
9 intended to be implemented by utilities. It uses
10 utility language, utility jargon and, yes, you would
11 hope the utility would make a -- you know, a studied
12 approach to seeing what type of load is to be served,
13 what type of service is it going to require, and from
14 there determine what category it would fit and, you
15 know, whether or not it would have an opportunity to
16 serve that load.

17 Q Then, for example, in determining if a
18 customer fits within a certain category to determine
19 whether in looking at the maps that utility has the
20 right to serve in that area, under your proposal a
21 request by a developer to serve a subdivision in
22 different phases could be aggregated or combined by
23 that customer, or, say, by Gulf Power, as a single
24 request for service and, therefore, elevated into a
25 different category, correct?

1 A Yes, that's correct. And I believe that's
2 the proper way, you know, to plan and construct
3 facilities is to look at the total load that's
4 reasonably expected in an area and not just the first
5 house that happens to get built in that subdivision.

6 If you know that 50 lots are going in, the
7 developer is putting all the infrastructure in place,
8 he has the lots for sale, some of them already sold,
9 some construction beginning, I'd hate to think that we
10 would extend and plan our facility expansion based on
11 just that first house that's to be built.

12 Q Mr. Spangenberg, is it correct that you
13 would not consider it to be true that if there was
14 exclusive territory assigned specific delineated --
15 assigned specific delineated boundary, that your
16 planning department would have no difficulty figuring
17 out who was going to serve inside your own territory
18 and, therefore, could prudently plan your system
19 development and expansion?

20 A I'm sorry. What's the question? Is
21 something not true?

22 Q You don't consider that to be true; is that
23 correct?

24 A I'm sorry. Consider what to be true?

25 Q That if there was exclusive territory

1 assigned specific delineated boundaries -- assigning
2 specific delineated boundaries, that your planning
3 department would have no difficulty figuring out who
4 was going to serve inside your own territory and,
5 therefore, Gulf Power could prudently plan the system
6 development and expansion. You don't consider that to
7 be true, do you?

8 A Again, I'm not sure of your question. Let
9 me state what I believe to be true, and that might be
10 most helpful. I believe that --

11 Q Wait. Let --

12 A -- given any territory and any load
13 description, I believe that we have distribution
14 planning engineers who are capable of determining what
15 types of facilities that they might need to plan to
16 serve the types of customers that are reasonably
17 projected to locate in a particular area.

18 Q Mr. Spangenberg, do you remember I asked you
19 that question at your deposition, or it was asked of
20 you, and you said that you did not consider that to be
21 true?

22 A No, sir, I don't remember that particular
23 question, nor it being phrased that particular way.

24 Q Let me refer you to Page 56 of your
25 deposition, Lines 12 through 18, and let me ask you if

1 you were asked this question and you gave this answer:

2 "Question: Let me see if I follow this.

3 Wouldn't it be true that if there was exclusive
4 territories assigned specific delineated boundary,
5 your planning department would have no difficulty
6 figuring out who was going to serve inside your own
7 territory and, therefore, you could prudently plan
8 your system development and expansion? Is that true?"

9 "Answer: No, I do not consider that to be
10 true."

11 A That's certainly the response recorded here.
12 I would certainly still agree with that response,
13 because even with an assigned area, whether it's my
14 method or some much more simplistic method, you can
15 have some reasonable projection of what you think the
16 load growth is going to be. But if you know the
17 developer is planning a subdivision somewhere on the
18 northeast side of Panama City, even with exclusive
19 territories, you know he wants to plan a 100-lot
20 subdivision, you have no way of knowing whether he
21 might locate that 100-lot subdivision on your side of
22 the line or on the other utility's side of the line if
23 you're going with an exclusive territory scenario such
24 as you described in that question.

25 COMMISSIONER CLARK: Mr. Spangenberg, I'm

1 not clear as to why you wouldn't know. If he's
2 planning a subdivision and he's filed papers,
3 presumably you know where it's going to be.

4 **WITNESS SPANGENBERG:** And, yes, Commissioner
5 Clark, once he has filed those papers, I agree. Now
6 you're getting much more out of a planning horizon
7 into a much more specific construction plan, and at
8 that point you can certainly do a much better job of
9 planning what -- and deciding what facilities to
10 construct. But many of our developers would own large
11 tracts of land in these many large unserved areas, and
12 once -- we have no way of knowing where his next
13 100-lot development might -- you know, land might
14 occur, and whether it's on one side of the highway or
15 the other one --

16 **COMMISSIONER CLARK:** So you don't plan for
17 it?

18 **WITNESS SPANGENBERG:** We have to plan for
19 what we believe to be expected load growth, as Bill
20 Pope describes in his testimony, and we certainly plan
21 based on the growth characteristics we have seen in
22 the past.

23 **COMMISSIONER CLARK:** Let me ask you a
24 question this way: He's not filed anything, but you
25 know he's planning it. Do you then begin your

1 planning process to serve that customer?

2 **WITNESS SPANGENBERG:** No, ma'am, we do not.
3 We plan to serve what we believe to be the expected
4 load growth in the area.

5 **COMMISSIONER CLARK:** All right.

6 **WITNESS SPANGENBERG:** Until he has brought
7 to us a plat that says, I want to locate this
8 subdivision here. Only then can we factor into our
9 specific construction plans.

10 **COMMISSIONER CLARK:** What is the difference
11 between planning for load growth and planning for that
12 customer?

13 **WITNESS SPANGENBERG:** A big difference. If
14 I might -- and, again, it might be better left to Bill
15 Pope, but I'll give you my understanding based on my
16 experience in the area. When you're planning for load
17 growth in an area, you can look at the substations
18 that serve a particular area. You look at the feeders
19 that are serving a particular area. You look at how
20 load has grown on that substation on those feeders in
21 that area, and it gives you some sense of what to
22 expect in the future.

23 That does not tell you exactly where you're
24 going to have to tap off the next single-phase tap or
25 the next three-phase, you know, side feeder to go

1 serve a particular substation; and so you get to
2 what's area planning requirements, and that's much
3 different than deciding that we're going to need three
4 50 kW transformers to serve a new pumping station or a
5 new convenience store or something like that.

6 **COMMISSIONER CLARK:** So when you do area
7 planning, you are actually planning to serve customers
8 in that area?

9 **WITNESS SPANGENBERG:** We're planning to
10 serve an aggregate load that customers will put on an
11 area, yes. Put in an area.

12 **COMMISSIONER CLARK:** Do you think Gulf Coast
13 is doing the same thing?

14 **WITNESS SPANGENBERG:** Yes. I believe
15 they're planning on serving -- I hope they are --
16 planning on doing their area planning based on the
17 load growth that they have seen on their feeders and
18 on their substations, and based upon that they can
19 reasonably project what will occur into the future;
20 and given that scenario, given that much of that
21 planning is based on what we have seen in terms of
22 historical growth rates, it's almost impossible for
23 both utilities to be planning to serve the same load,
24 as some have tried to characterize in this proceeding.

25 **Q** **(By Mr. Floyd)** Given that answer, what

1 area is it that Gulf Power had plans to serve in its
2 planning in Northwest Florida?

3 A I believe Mr. Holland has adequately
4 answered that question in terms of territorial area.
5 I think what we're planning to serve is the load
6 rather than an area. We don't serve -- frankly,
7 nobody serves areas; they serve customers. And I
8 guess the best interests of customers is hopefully
9 what this proceeding is all about. And what we do is
10 look at what load growth we have seen from customers
11 and plan to serve those loads.

12 Q But don't you agree that in order to
13 accurately determine the area that you take the data
14 from, actually determine the amount of data that you
15 take, you have to have some type of area from which --
16 area from which you take the data. I mean, some --
17 all of the counties here or none of the counties.
18 There has to be some territory from which you take
19 that data in terms of projected load growth, correct?

20 A Yes. I'd agree that you have some sense of
21 the area that you're trying to serve, particularly the
22 area, for instance, surrounding a particular
23 substation or near a certain feeder.

24 Q What is your sense of the area that Gulf
25 Power takes in for purposes of taking that data to

1 determine its planning?

2 A Those areas that it has historically served.

3 Q And what areas are those?

4 A Well, we could get to a very extensive
5 description of that if we want to step through each of
6 these maps and show each of these areas.

7 Q Let me move on, then --

8 A I believe the best categorical description
9 of that is Northwest Florida.

10 Q Okay. Is it correct that Gulf Power's
11 definition of the term it uses in this proceeding of
12 uneconomic duplication is "duplication of one
13 utility's facilities by another utility at a cost that
14 is significantly above any corresponding exclusive
15 benefit to that utility"?

16 A Yes. If my hearing served me right of your
17 reading, I believe that's an accurate reflection of
18 what we have responded to in the interrogatories.

19 Q In fact, the interrogatory that asked that
20 question was Question No. 27 of Gulf Coast's first set
21 of interrogatories dated December 16th, '96, correct?

22 A Yes, that's correct.

23 Q And --

24 A I have a copy of that in front of me, if
25 that will help.

1 MR. FLOYD: We would like to have a copy of
2 this marked as Exhibit No. 12.

3 MR. STONE: While Mr. Haswell is handing
4 those out, I have the covers for Exhibit 11 I'll hand
5 out.

6 CHAIRMAN JOHNSON: Very good. Exhibit 12,
7 and a short title for this?

8 MR. FLOYD: It would be Gulf Power
9 definition of uneconomic duplication.

10 CHAIRMAN JOHNSON: Gulf Power definition of
11 uneconomic duplication?

12 MR. FLOYD: Yes.

13 (Exhibit 12 marked for identification.)

14 Q (By Mr. Floyd) And, Mr. Spangenberg, would
15 you read that particular answer that was given to the
16 question of "Please define the term 'uneconomic
17 duplication' as that term as used by Mr. Holland"?

18 A Yes, I'd be happy to. Uneconomic
19 duplication is the duplication of one utility's
20 facilities by another utility at a cost that is
21 significantly above any corresponding exclusive
22 benefit.

23 Q All right. Now, "exclusive benefit" as used
24 in that definition by Gulf Power is with reference to
25 the utility such that it would mean exclusive benefit

1 to the utility, correct?

2 A Yes. That's correct. And I believe that's
3 appropriate because it's also the utility that's going
4 to incur the cost.

5 Q And "exclusive benefit," then, as that term
6 is used would mean a benefit that would accrue to one
7 utility and not the other, correct?

8 A Yes, that's correct.

9 Q And this is a definition that you and others
10 at Gulf Power got together with Mr. Holland and
11 crafted to fit Gulf Power's concept of what uneconomic
12 duplication was to Gulf Power, correct?

13 A Yes. I'm not sure I totally agree with your
14 characterization of, you know, our purposes and
15 intents. We certainly knew that there had been some
16 guidance through case law, et cetera, what was
17 intended to be uneconomic duplication. We thought it
18 would be very helpful for our own purposes to arrive
19 at what we believed to be a common agreement about how
20 could we define uneconomic duplication, since it's a
21 term that had gotten -- what we expected and had seen
22 wide use of it during these proceedings.

23 Q With respect to these -- or within the
24 hatched category areas for Gulf Power --

25 **COMMISSIONER CLARK:** Before you leave that,

1 can I ask a question? What is meant by "corresponding
2 exclusive benefit?"

3 **WITNESS SPANGENBERG:** Let me -- I think
4 perhaps, Commissioner Clark, an example might best
5 serve there. It's possible that -- let's say we have
6 an area that is crosshatched or whatever. We have a
7 load coming in, and let's say it's a 50 kW three-phase
8 load, and let's say both facilities have three-phase
9 facilities there, and one utility might could serve
10 that load and have plenty of capacity on its feeder or
11 whatever and, therefore, would be able to receive the
12 benefit of fuller utilization of its facilities. And
13 let's say the other just doesn't have any spare
14 capacity left, and even though it might be able to
15 serve it, you begin to strain the facilities of that
16 utility.

17 So I believe you'd have a very different
18 benefit between those two utilities, and that's why we
19 use the word "exclusive benefit". There might be a
20 difference in benefits between utilities for a
21 particular type of load.

22 **COMMISSIONER CLARK:** I still don't
23 understand.

24 **WITNESS SPANGENBERG:** I'm sorry. My example
25 must not have been good enough.

1 **COMMISSIONER CLARK:** Well, exclusive to
2 whom?

3 **WITNESS SPANGENBERG:** To that particular
4 utility compared to the other utility.

5 **COMMISSIONER CLARK:** Well, explain to me
6 what the corresponding exclusive benefit is.

7 **WITNESS SPANGENBERG:** It would be the
8 benefit that accompanied that -- the service to that
9 particular customer where the question of uneconomic
10 duplication has been raised, and so you'd look at that
11 particular example, the particular cost of each of
12 those two utilities of making that incremental -- you
13 know, construction facilities to serve that particular
14 customer.

15 So you have a cost comparison already which
16 you may not have as a benefit comparison, and if there
17 is a difference in benefits, I believe it would be
18 economically proper to factor in that difference in
19 benefits also.

20 Now, admittedly I don't know of many
21 instances -- I believe that's not a common occurrence,
22 an exclusive benefit. I believe the difference in
23 cost to serve is a much more common occurrence, but I
24 would not want to rule out the possibility of an
25 exclusive benefit. You know, I can also imagine that

1 a CIAC payment -- a contribution aid to construction
2 payment by a customer who might be willing to pay that
3 to one utility versus another because he wanted
4 service from that utility so that he can enjoy the
5 benefit of lower rates, et cetera, might be an
6 exclusive benefit.

7 **COMMISSIONER CLARK:** The customer can buy
8 his choice.

9 **WITNESS SPANGENBERG:** If what -- I believe
10 that could be characterized that way, and it might be
11 some customers who would want to buy -- the
12 opportunity of making an advancement -- an investment
13 to get those lower rates, yes.

14 **COMMISSIONER CLARK:** Okay.

15 **Q** **(By Mr. Floyd)** Mr. Spangenberg, following
16 up on that under that definition, no matter what the
17 cost is or how large it may be to serve a customer or
18 how much larger it is than the cost to serve that
19 customer by another utility, if the exclusive benefit
20 received by Gulf Power is significantly above its cost
21 to serve, then Gulf Power, by its definition, would
22 not consider that to be uneconomic duplication,
23 correct?

24 **A** Not under this particular definition.
25 That's certainly correct. I would admit to you,

1 however, that past Commission practice and policy had
2 not yet advanced that far in economic theory, but I do
3 believe it's a viable economic concept.

4 Q And, therefore, since Gulf Power would
5 itself not consider that situation to constitute
6 uneconomic duplication, then if the customer requested
7 service, Gulf Power would feel compelled to serve it,
8 correct?

9 A I believe that's correct. It's a long
10 question, but let me phrase it this way. We feel
11 compelled to serve based on our obligation to serve,
12 and do serve based upon that obligation under the
13 purview of Commission, you know, rules and tariffs and
14 our own filed and approved tariffs.

15 Q Within these hatched categories that you
16 have on the map and, say, 2633, Map Number 3 or 4, or
17 Category Number 3 or 4, according to your proposal, if
18 Gulf Power serves a customer in that area, then there
19 is no uneconomic duplication that has occurred
20 according to you, correct?

21 A Yes. If it is that category and if five
22 miles is determined through the further costing
23 studies to be the correct and accurate distance to be
24 used, then yes, that presumption would be correct.

25 Q In the methodology that you've described or

1 proposed as a territorial boundary, there could very
2 well continue to be crossings of the two utilities'
3 lines and facilities, parallel lines on opposite sides
4 of the same street, and facilities that are in close
5 proximity or even intermingled with each other; is
6 that correct?

7 A Yes, that's correct.

8 Q And this crossing and commingling could well
9 be done by the utility which had a greater cost to
10 serve each customer than the other utility as long as
11 it was within the hatched allocated area?

12 A Yes, that's correct. If the hatched area
13 has been depicted using a proper definition of de
14 minimis, then by definition no uneconomic duplication
15 has occurred because those cost differences are very
16 small compared to the total issue at question.

17 Q And, in fact, in some cases the difference
18 in cost could be as much as a million dollars and
19 still be permissible as considered de minimis in your
20 categories?

21 A Yes. I believe if you were looking at the
22 construction, for instance, someone who came in with a
23 proposed 300-megawatt steel manufacturing facility or
24 forest products facility and it's going to cost, you
25 know, one company \$57 million to construct all the

1 transmission improvements and generation additions et
2 cetera to serve that customer, and it costs the other
3 one \$56 million to do that same thing, I'm not sure
4 that million-dollar difference is really significant
5 compared to the overall scope of things, particularly
6 if by making that service to that customer, this new
7 customer might save a couple million dollars a year
8 because of lower rates from one utility compared to
9 the other.

10 Q All right. But the other factor to be
11 included in that, based on your definition, would be
12 if that particular customer generated \$100 million in
13 revenue to Gulf Power, then that would justify -- that
14 would make it not uneconomic, correct?

15 A If that \$100 million was an exclusive
16 benefit to Gulf Power that would not incur to the
17 other utility, then yes, that would be correct.

18 Q And if you serve -- if Gulf Power served
19 that particular customer, then that benefit of
20 \$100 million would not come to Gulf Coast, would it?

21 A No. I don't believe it would. It would go
22 to Gulf Power and its corresponding, you know,
23 ratepayers and consumers, and I believe the best
24 public interests have been served.

25 MR. FLOYD: I don't have any further

1 questions. Thank you.

2 **CROSS EXAMINATION**

3 **BY MS. JOHNSON:**

4 Q Good morning, Mr. Spangenberg.

5 A Good morning.

6 Q Other than the maps that you've produced
7 that have been identified as Exhibit No. 11, have you
8 ever used the six-category methodology to produce any
9 other maps?

10 A No, I have not.

11 Q Why not?

12 A The reason being that, again, without the
13 parties coming to a common agreement -- and I believe
14 it should be also with Staff involvement -- how are we
15 going to define de minimis, or how does that de
16 minimis concept reflect to a cost construction
17 comparison for various types of loads and a common
18 agreement on the construction costs that are -- be
19 included in terms of the fixed stationary costs versus
20 those distance sensitive costs. And once parties have
21 come to a common agreement about that, then it's
22 proper to go through the next step of calculating the
23 distances, and then if it's desired to depict those
24 distances on a map, you would then go through that
25 mapping.

1 But until you know whether the -- for
2 instance, the five miles of Category 3 is 3.7 miles or
3 6.1 miles, frankly, I believe it would be a lot of
4 wasted effort to go through all of that until the
5 parties have first agreed on what is the right
6 distances based on what are the right costs to
7 consider.

8 **MS. JOHNSON:** That's all we have.

9 **CHAIRMAN JOHNSON:** Redirect? Or,
10 Commissioners, any questions? Redirect.

11 **MR. STONE:** Briefly.

12 **REDIRECT EXAMINATION**

13 **BY MR. STONE:**

14 **Q** Mr. Spangenberg, Mr. Floyd asked you
15 initially about your current job position. That's
16 certainly not the only position you've held within the
17 Southern electric system over the last 20 years, is
18 it?

19 **A** No, sir, it's not. I have worked in the
20 areas of distribution, engineering, transmission,
21 demand forecasting, division service, our local
22 customer -- our local office operations executive
23 office, substation design. I worked in several
24 different areas.

25 **Q** And it's through all of that collective

1 experience on which you have based the proposal that
2 you've outlined today; is that correct?

3 **A** Yes, it is.

4 **Q** And just to make it clear, you are not
5 advocating lines on the ground as the proper solution
6 in this case?

7 **A** No, I am not. As I stated in my testimony,
8 I don't believe lines on the ground are proper because
9 they can, in fact, cause uneconomic duplication rather
10 than prevent it. But knowing that what we saw coming
11 from the Commission's prehearing order and those types
12 of things, and their asking for innovative approaches,
13 we felt like it would be appropriate to offer an
14 innovate approach that could be translated into lines
15 on the ground. Therefore, we propose this particular
16 type of method: If you must go to lines on the
17 ground, this is the one that properly factors in all
18 the economic factors as best as we can determine.

19 **MR. STONE:** That concludes our redirect.

20 **CHAIRMAN JOHNSON:** Exhibits?

21 **MR. FLOYD:** We would like to move in -- to
22 have accepted into the record Exhibits 11 and 12.

23 **CHAIRMAN JOHNSON:** Show those two admitted
24 without objection.

25 (Exhibits 11 and 12 received in evidence.)

1 1996?

2 A Yes, I have.

3 Q Do you have any changes to that testimony?

4 A Yes, I do. On Page 5, Line 20, at the end
5 of the line "Gulf" should be "Bay".

6 CHAIRMAN JOHNSON: What was that again? On
7 Page 5, Line 20 at the end?

8 WITNESS BOHRMANN: At the end of Line 20 on
9 the page marked 5, "Gulf" should be "Bay".

10 CHAIRMAN JOHNSON: Okay.

11 WITNESS BOHRMANN: And on Page 11, Line 9
12 between the word "avoid" and "contact," the word
13 "inadvertent" should be inserted.

14 Q (By Ms. Johnson) Are there any other
15 corrections?

16 A No, there is not.

17 Q If I was to ask you the questions today that
18 are contained in your prefiled testimony, would your
19 answers be the same?

20 A Yes, they would.

21 Q Do you have any exhibits attached to your
22 testimony?

23 A No, I don't.

24 MS. JOHNSON: Staff would ask that the
25 testimony, the prefiled direct testimony, of

1 Todd F. Bohrmann be inserted into the record as though
2 read.

3 CHAIRMAN JOHNSON: It will be so inserted.
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DOCKET NO.: 930885-EU [Gulf Coast Electric Cooperative, Inc. -
Gulf Power Company]

WITNESS: Direct Testimony of Todd F. Bohrmann, Appearing On
Behalf of Staff

DATE FILED: November 15, 1996

DIRECT TESTIMONY OF TODD F. BOHRMANN

1 |
2 | Q Would you please state your name and business address.

3 | A My name is Todd F. Bohrmann; 2540 Shumard Oak Boulevard, Tallahassee,
4 | Florida, 32399-0850.

5 | Q By whom are you employed and in what capacity?

6 | A I am employed by the Florida Public Service Commission as a Regulatory
7 | Analyst for the Bureau of Electric Regulation, Division of Electric and Gas.

8 | Q Please give a brief description of your educational background and
9 | professional experience.

10 | A I graduated from the University of Central Florida in 1989 with a
11 | Bachelor of Arts degree in Economics. I was awarded a Master of Business
12 | Administration degree from the University of Central Florida in 1992.

13 | I was employed by the Florida Department of Environmental Protection as
14 | an economist from November, 1992 through May, 1994. I began employment with
15 | the Florida Public Service Commission as a Regulatory Analyst in the Division
16 | of Auditing and Financial Analysis in May, 1994. Subsequently in April, 1996,
17 | I transferred to the Division of Electric and Gas.

18 | Q What are your present responsibilities with the Commission?

19 | A I provide technical support for docketed and undocketed matters to the
20 | Commission on electric utilities in Florida. My areas of responsibility
21 | include territorial agreements and territorial disputes.

22 | Q What is the purpose of your testimony?

23 | A The purpose of my testimony is to recommend that the Commission adopt
24 | a policy to resolve this territorial dispute that will minimize future
25 | uneconomic duplication, but not preclude future customers in now-undeveloped

1 | areas from being served in the most safe, reliable, cost effective manner.
2 | The disputed areas in Bay and Washington Counties are represented in the 27
3 | individual color maps found in EXH 6 (WCW-1).

4 | Q Please provide a general background about the current territorial
5 | dispute between Gulf Power Company (Gulf Power) and Gulf Coast Electric
6 | Cooperative (Gulf Coast).

7 | A On September 9, 1993, Gulf Power filed a petition to resolve a dispute
8 | as to whether service to the Washington County Correctional Facility should
9 | be provided by Gulf Power or Gulf Coast. By Order No. PSC-95-0271-FOF-EU
10 | issued on March 1, 1995, the Commission ordered "that Gulf Power shall provide
11 | electric service to the Washington County Correctional Facility". The
12 | decision awarding service to Gulf Power was ultimately overturned by the
13 | Florida Supreme Court on May 23, 1996. However, the Court's decision did not
14 | address the portions of Order No. PSC-95-0271-FOF-EU which directed Gulf Power
15 | and Gulf Coast "to negotiate in good faith to develop a territorial agreement
16 | to resolve duplication of facilities and establish a territorial boundary in
17 | south Washington and Bay Counties." Order No. PSC-95-0271-FOF-EU further
18 | stated that if Gulf Power and Gulf Coast "are unable to negotiate an
19 | agreement, then (the Commission) will conduct an additional evidentiary
20 | proceeding to resolve the continuing dispute between them." Gulf Power's and
21 | Gulf Coast's distribution lines have been commingled or in close proximity in
22 | certain areas of south Washington and Bay Counties for many years. During
23 | that entire time and almost two years since the Commission issued Order No.
24 | PSC-95-0271-FOF-EU, Gulf Power and Gulf Coast have been unable to agree on a
25 | territorial boundary.

1 Q Please describe the Commission's authority to resolve this territorial
2 dispute between Gulf Power and Gulf Coast.

3 A In Section 366.04(2)(e), Florida Statutes, the Legislature delegated
4 explicit authority to the Commission to resolve, upon petition of a utility
5 or on its own motion, any territorial dispute involving service areas between
6 all electric utilities in the State. Furthermore, Section 366.04(5), Florida
7 Statutes, states:

8 The commission shall further have jurisdiction over
9 the planning, development, and maintenance of a
10 coordinated electric power grid throughout Florida to
11 assure an adequate and reliable source of energy for
12 operational and emergency in Florida and the
13 avoidance of further uneconomic duplication of
14 generation, transmission, and distribution
15 facilities.

16 Pursuant to this statutory authority, the Commission promulgated Rules
17 25-6.0439 - 25-6.0442, Florida Administrative Code.

18 Q Is this the first time that the Commission has directed parties to
19 resolve a territorial dispute?

20 A No. In 1992, the Commission was asked to resolve a territorial dispute
21 between Okefenoke Rural Electric Membership Cooperative (Okefenoke) and the
22 Jacksonville Electric Authority (JEA) which involved service to the Airport
23 Holiday Inn in Duval County. The Commission issued Order No. PSC-92-1213-FOF-
24 EU which, in part, directed JEA to develop a plan to eliminate the extensive
25 duplication of JEA's and Okefenoke's electric facilities in northern Duval

1 County. Okefenoke ultimately agreed to sell its electric facilities in Duval
2 County to JEA and establish a territorial boundary at the northern Duval
3 County line. The Commission approved this agreement in Order No. PSC-93-1676-
4 FOF-EU.

5 Q Is there a need to resolve the territorial dispute between Gulf Power
6 and Gulf Coast at this time?

7 A Yes. After a two day hearing in October, 1994, the Commission found
8 that the dispute between Gulf Power and Gulf Coast was much broader than the
9 prison site. The Commission has already stated its intention "to resolve the
10 continuing dispute between (Gulf Power and Gulf Coast)", if necessary, in
11 Order No. PSC-95-0271-FOF-EU. Gulf Power and Gulf Coast have been unable to
12 agree on a boundary despite the Commission's directive in Order No. PSC-95-
13 0271-FOF-EU. Gulf Power does not have a Commission-approved territorial
14 agreement with any other utility. Moreover, Gulf Power has expressed its
15 adamant opposition to drawing "lines on the ground" (see direct testimony of
16 Gulf Power's witness Holland).

17 On the other hand, Gulf Coast entered into a territorial agreement with
18 Florida Power Corporation in 1986 which the Commission approved in Order No.
19 15840. Also, Gulf Coast has shown a willingness to draw "lines on the ground"
20 to resolve this dispute by submitting territorial boundary maps of ~~Gulf~~^{BAY} and
21 Washington Counties (EXH 2 (AWG-2), EXH 2 (AWG-3), EXH 2 (AWG-4), EXH
22 2 (AWG-5), EXH 2 (AWG-6), and EXH 2 (AWG-7)).

23 Q Since the Commission acquired jurisdiction over territorial disputes,
24 how many disputes has the Commission been asked to resolve between Gulf Power
25 and Gulf Coast?

1 Since the Commission acquired jurisdiction over territorial disputes in
2 1974, there have been six disputes between Gulf Power and Gulf Coast which
3 required the Commission's determination of which utility should be awarded
4 service. Gulf Power's witness Weintritt stated that "the infrequency of the
5 disputes between these utilities demonstrates that the current system used to
6 allocate service territory works well". However, no other combination of two
7 utilities has produced more territorial disputes. Gulf Power has had five
8 other disputes with other utilities for a total of 11 disputes. During the
9 same period, Florida Power & Light Company, Florida Power Corporation, and
10 Tampa Electric Company have collectively had only ten disputes which required
11 the Commission to award service to a party in the dispute.

12 Q How many active territorial agreements has the Commission approved for
13 Florida's other investor-owned utilities?

14 A As of November 1996, the Commission has approved 44 active territorial
15 agreements between Florida Power Corporation and other utilities, 21 active
16 territorial agreements between Florida Power & Light Company and other
17 utilities, and 10 active territorial agreements between Tampa Electric Company
18 and other utilities.

19 Q Do you believe that Gulf Power's and Gulf Coast's distribution lines are
20 in close proximity to each other, commingled, or both?

21 A Yes. I have examined the 27 individual color maps submitted by Gulf
22 Power in Exhibit 6 (WCW-1) and also visited several locations within the
23 disputed areas to confirm what the maps seem to indicate. Observations from
24 the maps indicate several locations within the disputed area where Gulf
25 Power's and Gulf Coast's distribution lines are in close proximity to each

1 | other, commingled, or both. For example, near the intersection of 2nd Street
2 | and U.S. Highway 231 in Bay County, Gulf Coast serves two customers while Gulf
3 | Power serves the remaining customers. Gulf Power's and Gulf Coast's
4 | distribution facilities were less than 100 feet apart on 2nd Street (see EXH
5 | 6 (WCW-1), Map 2828NW). Also, in Washington County near Paradise Lakes,
6 | Gulf Coast has distribution facilities along the west side of Highway 279,
7 | while Gulf Power has distribution facilities along the east side of Highway
8 | 279. In one instance, Gulf Power's distribution facilities cross over Highway
9 | 279 and Gulf Coast's distribution facilities to serve one customer who is
10 | located next door to a Gulf Coast customer (see EXH 6 (WCW-1), Map 2220).

11 | Q How has the Commission previously resolved territorial disputes where
12 | the two utilities' distribution lines are in close proximity of each other,
13 | commingled or both?

14 | A Rule 25-6.0441(2), F.A.C., sets out the criteria that the Commission may
15 | consider in resolving territorial disputes. The subsection states:

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

19 | (a) the capability of each utility to provide
20 | reliable electric service within the disputed area
21 | with its existing facilities and the extent to which
22 | additional facilities are needed;

23 | (b) the nature of the disputed area including
24 | population and the type of utilities seeking to serve
25 | it, and degree of urbanization of the area and its

1 proximity to other urban areas, and the present and
2 reasonably foreseeable future requirements of the
3 area for other utility services;

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

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

9 In many instances, the first two criteria have not been found to be
10 controlling factors when determining which party should serve the disputed
11 area. For some disputes, the Commission has determined that the utilities'
12 cost to serve the disputed area has been the controlling factor, and awarded
13 service to the utility with the more cost effective service (e.g., Order No.
14 12858; Order No. 13668; Order No. 16106; Order 18822; Order 19590; Order No.
15 25074). In a few disputes when the first three criteria were not controlling
16 factors, the Commission has considered customer preference as the deciding
17 factor in awarding service to a utility (e.g., Order No. 16105; Order 24003).
18 On the other hand, the Commission has also assigned little or no weight to
19 customer preference (e.g., Order No. 12858; Order No. 13668; Order No. 16106;
20 Order No. 18425; Order No. 18886; Order 19590).

21 Q What actions should the Commission take where Gulf Power's and Gulf
22 Coast's distribution lines are in close proximity of each other, commingled
23 or both?

24 A Absent Gulf Power and Gulf Coast entering into a territorial agreement,
25 the Commission should establish territorial boundaries in those places where

1 | Gulf Power's and Gulf Coast's distribution lines are in close proximity of
2 | each other, commingled or both. These territorial boundaries should be
3 | discrete line segments of sufficient length to separate the two utilities'
4 | distribution facilities, where necessary, to ensure that future uneconomic
5 | duplication does not occur.

6 | Q Within the disputed area, do examples exist which show Gulf Power's and
7 | Gulf Coast's distribution lines are neither in close proximity of each other
8 | nor commingled?

9 | A Yes. There are several locations within the disputed area where Gulf
10 | Power's and Gulf Coast's distribution lines are neither in close proximity of
11 | each other nor commingled.

12 | Q What actions should the Commission take where Gulf Power's and Gulf
13 | Coast's distribution lines are neither in close proximity of each other nor
14 | commingled?

15 | A The Commission should not draw a territorial boundary where Gulf Power's
16 | and Gulf Coast's distribution lines are neither in close proximity of each
17 | other nor commingled. A territorial boundary is unnecessary where only one
18 | utility can serve a new customer without uneconomically duplicating the other
19 | utility's facilities. Also, a territorial boundary drawn in an area where
20 | either utility can provide safe, reliable, cost effective electric service
21 | without uneconomically duplicating the other utility's facilities would
22 | preclude customer choice and impair competition.

23 | No one can accurately predict today how growth patterns will occur in
24 | the now-undeveloped parts of the disputed area in the future. Therefore, the
25 | Commission should not impede the logical cost-effective expansion of each

1 utility's services. However, the Commission's decision not to draw
2 territorial boundaries in these now-undeveloped areas should not be
3 interpreted by the parties as a license to prematurely install isolated
4 distribution facilities. The Commission should direct Gulf Power and Gulf
5 Coast to cooperate so that extensions of each utility's distribution
6 facilities are handled in a cost-effective manner and that new territorial
7 boundaries are drawn as the now-undeveloped areas develop.

8 Q Why is the uneconomic duplication of distribution facilities not in the
9 public interest?

10 A Utilities are obligated to provide safe, reliable, cost effective
11 electric service to their customers. These characteristics are compromised
12 when a utility uneconomically duplicates the distribution facilities of
13 another utility. In one of the first territorial agreements approved by the
14 Commission, the Commission recognized that:

15 (i) if two similar utilities enter the same territory
16 and compete for the limited business of the area,
17 each will have fewer customers, but there inevitably
18 will be excess facilities which must earn a
19 reasonable return. The rates in such a situation
20 will be higher than the service is worth, or
21 customers in more remote areas will bear some of the
22 unjustified expense necessary to support such
23 economic waste (Order 3051).

24 Also, the reliability of each utility's service may suffer in an area where
25 an uneconomic duplication of distribution facilities has occurred. For

1 | example, when an outage occurs, affected customers may unwittingly contact the
2 | wrong utility to report the outage. In addition, when two utilities'
3 | distribution facilities are in close proximity to each other, commingled, or
4 | both, additional safety considerations impact both utilities' customers who
5 | are served by the distribution facilities and workers who repair and maintain
6 | the distribution facilities. For example, when one utility's distribution
7 | facilities cross the distribution facilities of another utility, workers who
8 | are repairing one utility's distribution facilities must take additional
9 | precautions to avoid ^{inadvertent} contact with the other utility's distribution facilities.

10 | Q Neither Gulf Power nor Gulf Coast believes that any customer should be
11 | transferred due to the resolution of this territorial dispute. Do you agree?

12 | A No. It may be necessary to transfer some customers to minimize future
13 | uneconomic duplication of facilities. However, the Commission should minimize
14 | the number of customers transferred between Gulf Power and Gulf Coast.
15 | Sufficient information is not currently available to estimate the number of
16 | customers that would be transferred between the two utilities. Each utility
17 | should transfer the affected customers as soon as possible while operating
18 | under the constraint of maintaining safe, reliable, cost effective service to
19 | its customers. A utility should transfer an affected customer when a change
20 | of use occurs, upon customer request, or within two (2) years after the
21 | resolution of this dispute, whichever happens first.

22 | Q Should the Commission establish customer enclaves (i.e., one or more
23 | customers of one utility surrounded or nearly surrounded by the other
24 | utility's customers) to resolve this territorial dispute?

25 | A No. Absent a compelling reason, the Commission should not condone

1 | customer enclaves. In the past, the Commission has discouraged customer
2 | enclaves as part of territorial agreements for any extended period of time.
3 | However, the Commission has recognized that in certain extraordinary
4 | circumstances it may be necessary to do so to ensure the cost-effectiveness
5 | and viability of the agreement (e.g., Order No. PSC-95-0668-FOF-EU; Order No.
6 | PSC-95-1522-FOF-EU)

7 | Q Does this conclude your testimony?

8 | A Yes.

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1 Q (By Ms. Johnson) Will you please summarize
2 your testimony?

3 A Thank you. Commissioners, the premise of my
4 testimony is relatively simple. Where Gulf Power's
5 and Gulf Coast's distribution facilities are in close
6 proximity, commingled or both, then the Commission or
7 the parties should draw discrete line segments of
8 sufficient length to prevent further uneconomic
9 duplication.

10 On the other hand, where Gulf Power's and
11 Gulf Coast's distribution facilities are neither in
12 close proximity nor commingled, then the Commission
13 nor the parties should draw a territorial boundary
14 line.

15 I strongly encourage the two parties to
16 continue negotiations in an attempt to reach a
17 territorial agreement within the disputed areas.
18 There's still time available to reach an agreement.
19 However, absent Gulf Power and Gulf Coast reaching a
20 territory agreement, my testimony represents a fair
21 compromise between the two parties' positions.

22 It provides the Commission the flexibility
23 to establish territorial boundaries where necessary,
24 but allows each utility's service area to expand in
25 places where the two utilities' distribution

1 facilities are neither in close proximity of each
2 other, nor commingled.

3 I believe my testimony is consistent with
4 the Commission's intent in the final order of what I
5 call the first phase of this docket and the subsequent
6 clarifying and amendatory order that the Commission
7 issued afterwards. This concludes a summary of my
8 testimony.

9 MS. JOHNSON: We tender the witness.

10 CHAIRMAN JOHNSON: Who should go first here?
11 Does it matter, counsel?

12 MS. JOHNSON: Gulf Coast.

13 CHAIRMAN JOHNSON: Gulf Coast?

14 MS. JOHNSON: Yes.

15 CHAIRMAN JOHNSON: Okay.

16 CROSS EXAMINATION

17 BY MR. FLOYD:

18 Q Good morning.

19 A Good morning.

20 Q Now, Mr. Bohrmann, the areas in which you
21 suggest these line segments in your direct testimony
22 to be drawn between these two utilities, those would
23 be the areas where you would determine through data
24 received from the utilities that there is the greatest
25 amount of commingling, crossing or placing of

1 facilities in close proximity of each other and
2 consequently where most of the uneconomic duplication
3 would occur, correct?

4 A Yes. Any decision that the Commission would
5 make would be based upon data that had been supplied
6 by the two utilities through the discovery process in
7 this proceeding.

8 Q And the determination of those particular
9 line segment areas would not mean that there are not
10 other areas in these subject maps where these
11 conditions may exist, would it? It would not
12 eliminate these type of -- the fact that these type of
13 conditions may exist in other parts of the map where
14 there are no line segments?

15 A The absence of boundaries drawn in a
16 particular area would not necessarily mean that no
17 economic duplication occurs at that place.

18 Q Now, Rule 20 -- Commission Rule
19 25-6.0041(2), which we normally refer to as those
20 rules that outline the method of the Commission's
21 determination in looking at a territory dispute, that
22 particular rule sets out the criteria that the
23 Commission may consider in resolving a territory
24 dispute, correct?

25 A Yes, it does.

1 Q And under subpart C, the factor that's
2 listed there is the cost of each utility to provide
3 distribution and subtransmission facilities in the
4 disputed areas, correct?

5 A Yes, it does.

6 Q Now, that factor does not include a
7 comparison of the exclusive benefit received by a
8 utility from serving a customer with that utility's
9 cost to serve that customer, does it?

10 A It does not say that in the rule.

11 Q Mr. Bohrmann, would you agree that in order
12 to achieve the objective of preventing further
13 territorial disputes from being filed with this
14 Commission or being sent to the Supreme Court for
15 review, that the longer the line segments and the more
16 contiguous they are throughout these areas, these,
17 quote, "disputed areas," end quote, the more this
18 objective would be achieved?

19 A No, I wouldn't necessarily say that.

20 Q Okay. Is it your understanding that using
21 the Commission's authority to reduce or prevent
22 further territorial disputes was the focus of comments
23 from the Supreme Court justices in the oral argument
24 on this case?

25 A Can you please repeat that question?

1 Q Is it your understanding that using the
2 Commission's authority to reduce or prevent further
3 territory disputes between these parties in these
4 areas was the focus of comments made by the Supreme
5 Court justices in their oral argument in the preceding
6 part of this case?

7 MR. STONE: Commissioner, I'm not sure the
8 proper predicate has been laid to ask that question of
9 this witness.

10 CHAIRMAN JOHNSON: Is there a response?

11 MR. FLOYD: Well, I'll review that -- I'll
12 go back and ask a preceding question, then, for that
13 if you'll allow me, Chairman.

14 MS. JOHNSON: Chairman Johnson, I also
15 believe that this is a little beyond the scope of this
16 witness' testimony.

17 MR. FLOYD: I'm sorry. I'll withdraw the
18 question.

19 CHAIRMAN JOHNSON: Okay.

20 Q (By Mr. Floyd) Is it your opinion that the
21 Commission should determine the location of a
22 territorial line based on what is in the best
23 interests of the public or all of the consumers as
24 opposed to the interests of an individual customer?

25 A Any decision made by the Commission should

1 be made in light of what's in the best public
2 interest, and not the individual interest of a
3 customer.

4 MR. FLOYD: Thank you. No more questions.

5 CHAIRMAN JOHNSON: Gulf Power?

6 MR. STONE: Thank you.

7 CROSS EXAMINATION

8 BY MR. STONE:

9 Q Good morning, Mr. Bohrmann.

10 A Good morning.

11 Q Have you worked on any other cases at the
12 Commission involving service areas for electric
13 utilities?

14 A I've worked on two territorial agreements in
15 addition to this dispute.

16 Q Could you tell me the parties in those two
17 territorial agreements that you've worked on, or
18 docket numbers?

19 A The first one was Florida Power Corporation
20 and the City of Alachua, and the second one was
21 recently assigned to me, Suwannee Valley Electric
22 Cooperative and Clay Electric Cooperative.

23 Q And you said -- the second one you described
24 has just recently been assigned to you, so that's
25 ongoing now?

1 A That's an ongoing docket.

2 Q And the other one was an agreement that was
3 presented that you worked on?

4 A Yes, sir.

5 Q Has that agreement been approved by the
6 Commission?

7 A Yes, sir.

8 Q And what role did you play in those cases?
9 Or in the first case, I guess, since that's the one
10 that's been concluded.

11 A My job description entails writing discovery
12 questions, writing interrogatories, participating in
13 hearings, agenda conferences. Those were the duties
14 that I performed in that docket. I wrote discovery
15 questions. I analyzed the responses. I wrote part of
16 the recommendation and attended the agenda conference
17 and was available to answer any questions that the
18 Commissioners may have on that specific item.

19 Q And in that particular case it was an
20 agreement that was brought to the Commission by the
21 two utilities involved, and your role would be to
22 examine that agreement and determine that it was in
23 the public interest and make a recommendation whether
24 to approve or disapprove the agreement; is that
25 correct?

1 A Yes.

2 Q I also understand that you were not involved
3 in the first stage of this case before the Commission,
4 that is the stage that led to the March 1, 1995 order
5 awarding service rights regarding the Washington
6 County Prison to Gulf Power Company. Am I correct in
7 my understanding?

8 A You are correct. I became an employee of
9 the Division of Electric and Gas approximately a year
10 ago. So anything, any docket that went on before that
11 time I would only have secondhand information about.

12 Q But you have, in fact, reviewed that
13 March 1, 1995 order; is that correct?

14 A I reviewed and analyzed the testimony filed
15 in that hearing and read the orders and the Supreme
16 Court opinion that followed.

17 Q When you say you reviewed the testimony,
18 does that mean you reviewed the transcript, or did
19 you --

20 A I reviewed the hearing transcript. It's
21 been a while since I've taken a look at it. I
22 couldn't answer any specific questions without first
23 referring to it.

24 Q Would you agree with the proposition that at
25 the conclusion of the initial stage of the proceedings

1 in this docket, the Commission thought that Gulf Coast
2 Electric Cooperative had uneconomically duplicated the
3 facilities of Gulf Power in order to serve the prison?

4 **A** The Commission stated in its first order
5 that Gulf Coast had spent approximately \$15,000 more
6 to serve the prison than Gulf Power would have, and
7 awarded the prison site to Gulf Power on that basis.
8 That decision was subsequently overturned by the
9 Supreme Court, and -- based upon the fact that the
10 prison preferred Gulf Coast as its utility provider,
11 not Gulf Power, and the Commission then issued an
12 order to that effect, I believe sometime last summer.

13 **Q** But in terms of that March 1, 1995 order,
14 that \$15,000 difference that you indicated the
15 Commission cited in that order was found in that order
16 to be uneconomic duplication of Gulf Power's
17 facilities; is that correct?

18 **A** I would have to refer to the order itself to
19 see if those were the exact words.

20 **MS. JOHNSON:** Is there any particular
21 portion of the order that you want to direct him to,
22 Mr. Stone?

23 **MR. STONE:** Actually, this was a preparatory
24 question for my next question, so I don't have the
25 particular section of the order; but I believe that's

1 a fair reading of the order. I can get that. The
2 witness is looking at it as well.

3 MR. FLOYD: Chairman Johnson, I would just
4 insert -- I don't know if it's in the class of an
5 objection, but certainly we don't need to have the
6 witness testifying as to what the order says. We have
7 that, and we could -- I believe it's made a part of
8 the record here.

9 MR. STONE: Again, my reason for asking that
10 question was for the next series of questions. In
11 short, the reference is on Page 6. It's the last
12 paragraph on Page 6.

13 WITNESS BOHRMANN: Yes, I do see where it
14 says the Commission stated "We find that economic
15 duplication between these utilities exists near the
16 intersection of County Road 279 and State Road 77."

17 Q (By Mr. Stone) Okay. In that sense, then,
18 the Commission agreed with Gulf Power which had filed
19 the petition complaining of uneconomic duplication;
20 isn't that correct?

21 A Yes, it did.

22 Q You did mention that the Florida Supreme
23 Court reversed the Commission's decision and that the
24 Supreme Court ruled that the cost differential in the
25 case -- again, I guess the \$15,000, or nearly \$15,000

1 that you referenced -- did not warrant a finding of
2 uneconomic duplication had occurred. Is that a fair
3 statement?

4 **MR. FLOYD:** I want to interpose an objection
5 at this time as to what the Supreme Court said or
6 meant. Certainly it's stated in there, and every --
7 the intent of the Supreme Court is stated in the
8 confines of that particular order, and it would be
9 certainly beyond the scope of the knowledge of the
10 witness to testify to what the Supreme Court intended
11 or meant.

12 **MR. STONE:** Commissioner, this witness, I
13 believe, has testified that he relied upon the Supreme
14 Court's order in formulating his opinion in this case,
15 and I'm just exploring that.

16 **MS. JOHNSON:** Chairman Johnson, I would
17 agree with Mr. Floyd that the order speaks for itself.
18 I think that perhaps Mr. Stone is laying some
19 predicate. If we could move along and get to the
20 question, that would perhaps simplify matters.

21 **MR. STONE:** I'm trying.

22 **CHAIRMAN JOHNSON:** So are you objecting to
23 the last question that was asked?

24 **MS. JOHNSON:** Yes. I think the order speaks
25 for itself.

1 **CHAIRMAN JOHNSON:** Could you repeat your
2 question?

3 **MR. STONE:** I'll try.

4 **Q** **(By Mr. Stone)** The Florida Supreme Court
5 reversed the Commission's decision ruling that the
6 cost differential in the case, the nearly \$15,000 that
7 you referred to, did not warrant a finding of
8 uneconomic duplication having occurred; isn't that
9 correct?

10 **CHAIRMAN JOHNSON:** And you had answered that
11 had one, I believe.

12 **MR. STONE:** I think that's the one they
13 objected to.

14 **MR. FLOYD:** Correct.

15 **MS. JOHNSON:** I think the order speaks for
16 itself, and if I'm remembering correctly, he had
17 already indicated that the Supreme Court had
18 overturned the Commission. So to some extent it's
19 been asked and answered.

20 **CHAIRMAN JOHNSON:** I think that perhaps it
21 has been asked and answered, but if you could continue
22 with your line of questioning.

23 **MR. STONE:** Thank you.

24 **Q** **(By Mr. Stone)** Didn't the Supreme Court,
25 in fact, find that customer preference should have

1 been a significant factor in that case?

2 **A** Yes, it did.

3 **MR. FLOYD:** Same objection, and move to
4 strike.

5 **CHAIRMAN JOHNSON:** I'm going to allow the
6 question and the answer.

7 **MR. STONE:** Thank you.

8 **Q** **(By Mr. Stone)** Isn't it true that lines on
9 the ground, had they existed, would have precluded
10 customer choice in the case of the Washington County
11 Prison?

12 **MS. JOHNSON:** I'm going to object. I
13 believe this is beyond the scope of this witness'
14 testimony. He hasn't testified to the particulars of
15 the case involving the Washington County Prison. I
16 mean, he makes reference to the fact that in that
17 order the Commission awarded the prison to Gulf Power,
18 which was overturned; but his testimony does not
19 address that particular dispute in particular.

20 **MR. FLOYD:** Gulf Coast joins in that
21 objection. Thank you.

22 **MR. STONE:** I believe that this witness has
23 indicated a preference for some form of lines on the
24 ground. I think I'm allowed some latitude to explore
25 the nature of his opinion and the effect of the

1 reviews of documents that he has relied upon in
2 forming that opinion. And so -- the objections are
3 taking far longer than the questions themselves would
4 take.

5 **CHAIRMAN JOHNSON:** Ms. Johnson, let me
6 better understand the basis for your objection. It
7 does appear as if the witness was relying on -- I'll
8 let you go ahead and explain to me again the basis of
9 your objection.

10 **MS. JOHNSON:** The basis for my objection is
11 that his testimony is relating to -- is not relating
12 to the particulars of the dispute regarding the
13 prison, and I think that the questions that Mr. Stone
14 is asking aren't specifically directed to what
15 occurred in that case.

16 **MR. STONE:** And that's not -- my question is
17 directed at what would result if the action taken in
18 this case -- and I'm applying that to examples.

19 **CHAIRMAN JOHNSON:** Could you respond to
20 that, because I didn't understand his question to
21 relate directly to that dispute either. It was a more
22 generic question. But if the witness isn't prepared
23 or doesn't understand or doesn't feel comfortable
24 answering the question, that will be fine. But I'm
25 not understanding how his question relates directly to

1 the previous case.

2 MS. JOHNSON: Well, I believe that --
3 perhaps I'm anticipating the questions that are coming
4 following this question, but the witness' testimony
5 does not address that particular dispute, and I'm
6 just -- I would like to caution the Commission in not
7 allowing the cross-examination of matters that the
8 witness has not testified to.

9 COMMISSIONER DEASON: It seems to me that
10 what they're trying explore is if his proposed
11 methodology had been in place prior to that decision,
12 what effect would it have had, and that's what I think
13 they're trying to explore; and I'm curious, too. His
14 methodology that he's testifying to today, if it had
15 been in place prior to that dispute, what effect would
16 it have had.

17 And I think that if he's proposing a
18 methodology, he needs to be prepared to defend that
19 methodology and explain examples, and even if it's an
20 historical example, how it would have applied; and I
21 think we need to know that before we are required to
22 endorse his proposal. So if you don't allow that
23 question, I'm going to ask it myself, okay?

24 MS. JOHNSON: We'll withdraw the objection.

25 CHAIRMAN JOHNSON: That's fine. Go ahead

1 had asked you a question, but I don't believe you'd
2 given -- had been given an opportunity to give the
3 answer yet.

4 My question is, "Isn't it true that lines in
5 the ground, had they existed, would have precluded
6 customer choice with regard to the determination as to
7 which utility would serve the Washington County
8 prison?"

9 A In my answer, do you want me to assume that
10 Gulf Power would have been on the right side of the
11 line to serve the prison?

12 Q No. I'm suggesting to you that regardless
13 of where the line is drawn and the mere existence of
14 the line would have taken away the opportunity of the
15 customer to choose.

16 A Before the -- what I call first phase of
17 this proceeding, there had been no discovery done and
18 there would be no way to know whether or not a line
19 should have or would have been drawn at that
20 intersection.

21 Q I understand. Let me rephrase the question
22 and perhaps make it easier for you to address.

23 A Okay.

24 Q Assume hypothetically that a line had been
25 drawn.

1 A Okay.

2 Q Now, isn't it true that had that line, if it
3 had existed, that customer choice would have been
4 precluded in the case of which utility would serve the
5 prison?

6 A The Washington County Board of Commissioners
7 would have been assigned the utility that was located
8 on the right side of the line.

9 Q And so there would have been no opportunity
10 for customer choice?

11 A His ability to choose would have been
12 severely limited. He could have chosen to locate
13 somewhere else.

14 Q I understand what distinction you are trying
15 to draw. Given that the prison was going to locate at
16 that location, then there would have been no
17 opportunity for customer choice.

18 A Given those assumptions then, the answer
19 would be yes.

20 Q Thank you for helping me clarify the
21 question. If either Gulf Power or Gulf Coast is asked
22 to serve a new customer at a specific location and the
23 cost differential between those two utilities to serve
24 that customer at that location is de minimis, does
25 uneconomic duplication occur when one utility is

1 chosen by the customer as the electric supplier over
2 the other?

3 A The utility which has a higher cost to serve
4 is -- by a de minimis amount is chosen over the other
5 utility, is that what you are asking?

6 Q Certainly.

7 A Well, the Commission, I believe, has never
8 defined what de minimis is. The only guidance that we
9 have is the Supreme Court opinion which states based
10 upon the unique factual circumstances of the case, you
11 know, says that \$15,000 is included in a de minimis
12 amount.

13 The Commission has a number of criteria that
14 it looks at to determine who should serve a customer
15 and it states that when all other factors are equal,
16 then customer preference should be the determining
17 factor.

18 If it cost more for one utility to serve a
19 customer than the other, and there's been no
20 determination whether or not that amount is de
21 minimis, then the utility with the lower cost to serve
22 should be the one to serve the customer.

23 Q Okay. The words in the rule are actually
24 "all factors are substantially equal"; isn't that
25 correct?

1 A I believe that's correct. Let me just check
2 to make sure. Yes.

3 Q And it is that concept of substantially
4 equal that lead to the Supreme Court's determination
5 that the cost differential on the facts of that case
6 were, in fact, de minimis?

7 A That is what the Supreme Court said.

8 Q And what I'm asking you to assume for
9 purposes of the question is regardless of what that
10 number is, if, in fact, it is de minimis, has
11 uneconomic duplication occurred? (Pause)

12 A I really can't formulate an answer at this
13 point.

14 Q Okay. In the case of the Washington County
15 Prison, from your review of the record in that
16 proceeding and the Supreme Court's opinion, is it your
17 understanding that Gulf Coast had to build new
18 facilities to serve that load?

19 A I recall that they had to remove a line and
20 then install three-phase facilities to serve that
21 load, if my memory serves me correct.

22 Q So in other words, it did not serve the
23 prison from existing facilities?

24 A They had to change their facilities based
25 upon what I just said, so --

1 Q I guess the answer is yes?

2 A Yes.

3 Q And I think we've already established that
4 the Supreme Court found that uneconomic duplication
5 had not occurred through that new construction; isn't
6 that correct?

7 A The Supreme Court said that that amount was
8 a de minimis amount.

9 Q And, therefore, was not uneconomic
10 duplication, correct?

11 COMMISSIONER CLARK: Mr. Stone, will you
12 tell me where in that decision they said it was not
13 uneconomic? Just give me the page cite or whatever.
14 And if you could read it to me, I would appreciate it.

15 MR. STONE: It would be on Page 7.

16 COMMISSIONER CLARK: Okay.

17 MR. STONE: Of the opinions. Mr. Cresse
18 points out to me that they also said it again on
19 Page 9.

20 COMMISSIONER CLARK: Would you go ahead and
21 read it, I don't have that in front of me right now.

22 MR. STONE: On Page 7 it says "Based upon
23 the unrefuted facts and the Commission's own findings,
24 we conclude that the Commission erred in failing to
25 consider customer preference and abused its discretion

1 awarding service to Gulf Power. We reach this
2 decision after finding under the unique factual
3 circumstances of this case that there is no competent,
4 substantial evidence in the record to support the
5 Commission's findings that Gulf Coast, one,
6 uneconomically duplicated Gulf Power's facilities, and
7 two, engaged in a race to serve the prison."

8 And then on Page 9, "Given our conclusion
9 that Gulf Coast did not uneconomically duplicate Gulf
10 Power's facilities or engage in a race to serve, we
11 find that the record supports the conclusion that
12 factors set forth in Rule 25-6.0441 are substantially
13 equal."

14 **COMMISSIONER CLARK:** Thank you.

15 **MR. STONE:** There's one more reference I
16 would like to draw to your attention consistent with
17 this. This is on the bottom of Page 7 and the top of
18 Page 8. "Although Gulf Power did have a three-phase
19 line available to serve the prison, we cannot agree
20 that the relatively small cost incurred by Gulf Coast
21 in upgrading its existing line was sufficient to
22 characterize this upgrade as uneconomic."

23 There may be other references in the Order.
24 Those are three that we are able to find rapidly.

25 **COMMISSIONER CLARK:** Thank you.

1 Q (By Mr. Stone) I believe I was asking a
2 question, and I'm not sure I heard the answer.

3 A Can you please repeat the question?

4 Q I will try.

5 A Okay.

6 Q We did establish that Gulf Coast did not
7 serve the prison from existing facilities. And I
8 guess my question to you was, yet the Supreme Court
9 found that uneconomic duplication had not occurred
10 through this new construction; isn't that correct?

11 A That's correct.

12 Q Given that the Supreme Court found that
13 construction of new facilities to serve the prison did
14 not constitute uneconomic duplication of Gulf Power's
15 existing facilities, do you consider the use of
16 existing facilities to serve new customers to be a
17 further uneconomic duplication of other existing
18 facilities that might be used to serve those new
19 customers?

20 A If the facilities have been deemed to be
21 uneconomic, then future use of them or extensions onto
22 those existing facilities would be uneconomic. If no
23 determination has been made, then we would have to
24 wait until there was enough data available to make
25 that determination.

1 So I guess the answer is, it depends upon
2 the circumstances of the facilities, why they are
3 there, how long they have been there, what the cost to
4 install them was.

5 Q I wanted you to assume that we had
6 facilities that were already in place by both
7 utilities.

8 A Okay.

9 Q And my question was, do you consider the use
10 of existing facilities to serve new customers to be a
11 further uneconomic duplication of other existing
12 facilities that might also be used to serve those same
13 new customers? Assuming we are talking about existing
14 facilities in each case.

15 A And I think I responded to that. If there's
16 been no determination that uneconomic duplication
17 exists in those two distribution facilities, then
18 further service would not be uneconomic. But if a
19 determination had been made that one of the utilities
20 had uneconomically duplicated the other utility's
21 facilities, then there would be further uneconomic
22 duplication.

23 Q On Page 4 of your testimony, you refer to
24 Section 366.04(2)(e) of the Florida Statutes with
25 regard to the authority of the Commission to resolve

1 any territorial dispute involving service areas
2 between electric utilities in the state. Do you
3 recall that reference?

4 A Yes, I'm looking at it right now.

5 Q You then quote from Section 366.04(5)
6 regarding the Commission's jurisdiction over planning,
7 development and maintenance of a coordinated electric
8 system in Florida, in part to assure the avoidance of
9 further uneconomic duplication of generation,
10 transmission and distribution facilities.

11 A Yes, I see where I've said that.

12 Q Okay. In your review of Section 366.042(e),
13 do you find the words "avoid" or "avoidance" with
14 regard to territorial disputes?

15 A I don't have a copy of that statute in front
16 of me.

17 Q That's fair enough.

18 A Okay.

19 MR. STONE: With the Commission's
20 permission, I would like to approach the witness and
21 hand him the statute book of that section.

22 CHAIRMAN JOHNSON: Sure.

23 WITNESS BOHRMANN: And your question was if
24 I had seen what?

25 Q (By Mr. Stone) In your review of Section

1 366.042(e), do you find the words "avoid" or
2 "avoidance" with regard to territorial disputes?

3 A No, I don't. But if I can expand on my
4 answer, I think the Commission in its delegated
5 authority has the duty to make sure that when it
6 resolves a dispute, that it resolves it for the best
7 long-term interest of all customers affected by it.
8 To resolve a dispute and -- you know, in a short-term
9 Band-Aid type fashion would not be congruent with what
10 the legislature delegated to the Commission.

11 Q But you did agree that the words "avoid" or
12 "avoidance" of territorial disputes is not in the
13 statute?

14 A Yes, that is correct.

15 Q Isn't it true that neither Section
16 366.042(e), nor Section 366.04(5), speaks in terms of
17 eliminating territorial disputes as a statutory
18 directive?

19 A No, they do not.

20 Q In either of these statutory sections, is
21 there any mention of a method to be used by the
22 Commission to, quote, "resolve territorial disputes"?

23 A In Section 366.042(e), it does list criteria
24 which the Commission may consider to resolve
25 territorial disputes.

1 Q And you would consider that criteria to be a
2 method?

3 A The application of that criteria and other
4 criteria that the Commission may deem suitable is a
5 method to determine territorial disputes.

6 Q Well, is there any mention in the statutes
7 about the Commission's use of fixed territorial
8 boundaries as a means of resolving territorial
9 disputes?

10 A No, it does not, but I feel that it is a
11 method to resolve territorial disputes.

12 Q One that is not mentioned specifically in
13 the statutes?

14 A It is not mentioned specifically, but I feel
15 that it is a method that can be used by the Commission
16 at its discretion.

17 Q Mr. Bohrmann, I believe you indicated that
18 you have done some review of past territorial disputes
19 involving these two utilities and other disputes
20 involving Gulf Power Company in the course of
21 preparing for this testimony; is that correct?

22 A Yes, I have.

23 Q Are you familiar with the Commission's Order
24 No. 15348 granting Gulf Power Company's motion to
25 dismiss in Docket No. 850132-EU?

1 A I may have reviewed that Order, I can't
2 speak specifically to it unless it's in front of me.

3 MR. STONE: With the Commission's permission
4 I would like to approach the witness and hand him a
5 copy of the Order which I will distribute to everyone.

6 CHAIRMAN JOHNSON: Certainly.

7 MR. STONE: Or rather I'll distribute as far
8 as I have copies.

9 CHAIRMAN JOHNSON: Sure.

10 Q (By Mr. Stone) Mr. Bohrmann?

11 A Yes.

12 Q You now have a copy of that Order I just
13 referred to. Would you please read the third and
14 fourth paragraphs of that Order?

15 A Starting with "Chelco"?

16 Q Yes, please.

17 A "Chelco also alleges that a territorial
18 dispute between the two utilities now exists, and that
19 a Commission determination of boundary lines is
20 necessary under Subsection 366.04(2)(e) Florida
21 Statutes. According to the amended petition, no
22 controversy over customers or territory has yet
23 occurred, but Chelco believes such controversy is
24 imminent. However Subsection 366.04(2)(e), Florida
25 Statutes, speaks in terms of an existing territorial

1 dispute, and unless and until an actual and real
2 controversy exists, no statutory basis for interceding
3 in a potential dispute exists.

4 "In consideration of the foregoing, we find
5 that Gulf's motion to dismiss Chelco's amended
6 petition should be granted. Because Petitioner,
7 Chelco, has been given two opportunities to state a
8 cause of action, both without success, we find that
9 the amended petition should be dismissed with
10 prejudice. Therefore, it is" --

11 Q In this stage of this docket before us
12 today, there is no existing controversy over a
13 particular customer seeking service from one or the
14 other of the two utilities, is there?

15 A No, there is not. I'm not aware of any.
16 However, the statute, I believe, was changed since
17 this point as stated in Witness Holland's testimony.

18 Q And what was the change?

19 A That the Commission may resolve a
20 territorial dispute upon its own motion.

21 Q But that did not specifically state that
22 that portion of the Order that talks about there
23 needing to be a real controversy over a customer or
24 group of customers, did it?

25 A My interpretation is once the Commission

1 determines that a dispute exists, then the dispute
2 exists. That's how I would interpret it.

3 Q But to be clear, there is no existing
4 controversy over a particular customer seeking service
5 that's before the Commission in this case?

6 A I'm not aware of any specific customer.

7 Q At Pages 3 and 4 of your testimony, you make
8 reference to a case from Northern Duval County
9 involving the Jacksonville Electric Authority and
10 Okefenokee Rural Electric Membership Cooperative.
11 Isn't it true that the JEA/Okefenokee case was
12 ultimately resolved via a territorial agreement
13 between the parties?

14 A Yes.

15 Q The agreement between the parties was
16 approved by the Commission pursuant to Section
17 366.04(2)(d) of the statutes; isn't that correct?

18 A I was not aware of that.

19 Q Are you aware that the statute, that it
20 gives the Commission authority to approve territorial
21 agreements, is Subsection (2)(d)?

22 MS. JOHNSON: Chairman Johnson, I'm going to
23 object. Mr. Stone has asked Mr. Bohrmann a number of
24 questions regarding the Commission's authority under
25 Chapter 366. Mr. Bohrmann is not an attorney. He's

1 testified to the best of his ability. I think the
2 orders, the JEA/Okefenokee Order that Mr. Stone is
3 referring to, speaks for itself. If he would like for
4 the Commission to take official recognition of that
5 Order, the Commission can also do that. But to have
6 this witness go back and review the Order and testify
7 as to the particular subsection of 366 that the
8 Commission based its decision, I think is unnecessary.

9 **CHAIRMAN JOHNSON:** Mr. Stone.

10 **MR. FLOYD:** Chairman Johnson.

11 **CHAIRMAN JOHNSON:** Oh. Go ahead.

12 **MR. FLOYD:** I would also object on the basis
13 that what he appears to be trying to do here is to get
14 the witness to give his opinion on the jurisdiction of
15 the Public Service Commission, which is beyond the
16 scope of not only his direct, but also beyond his
17 ability as a witness.

18 **MR. STONE:** Chairman Johnson, Mr. Bohrmann
19 has referred to Section 366.04(2)(e) of the statutes
20 with regard to resolving territorial disputes. He
21 then in the very next section of his testimony refers
22 to a territorial dispute that was ultimately resolved
23 by an agreement. I'm simply trying to point out that
24 it is a different portion of the statute that
25 addresses the Commission's authority to approve

1 agreements. That was the nature of my question.

2 And that the section that he had testified
3 to was not the same section under which the Commission
4 approves agreements. Given that, I'm prepared to move
5 on to the next question.

6 CHAIRMAN JOHNSON: Move on, please.

7 Q (By Mr. Stone) At Page 5 of your
8 testimony, you note that Gulf Power does not have a
9 Commission-approved territorial agreement with any
10 other utility.

11 A Yes, I did.

12 Q And territorial agreements would be approved
13 based on your participation in that case involving
14 Florida Power Corp and Alachua, which I believe is the
15 City of Alachua which is a municipal utility, am I
16 correct?

17 A I didn't catch the entire sentence. What?

18 Q At the beginning of our conversation this
19 afternoon, you indicated that you had worked on a case
20 involving a territorial agreement between Florida
21 Power Corporation and the City of Alachua.

22 A Yes, I did.

23 Q And the City of Alachua is a municipal-owned
24 utility, electric utility?

25 A Yes, they are.

1 Q And that territorial agreement was brought
2 to the Commission under its authority to approve
3 territorial agreements under Section 366.04(2)(d) of
4 the statute; is that correct?

5 A Yes.

6 Q And so you are familiar with that portion of
7 the statute?

8 A After reviewing it, I am familiar with it.

9 Q And you recall that you used that in your
10 previous work before the Commission?

11 A Yes.

12 Q I'd like to hand you a copy of an Order of
13 the Commission, Order No. 10444 issued in Docket
14 No. 810171-EU. This would be the first territorial
15 dispute before this Commission involving these two
16 utilities.

17 MR. STONE: May I approach the witness?

18 CHAIRMAN JOHNSON: Uh-huh.

19 MR. STONE: Thank you. (Document tendered.)

20 Q (By Mr. Stone) Mr. Bohrmann, if you could
21 turn to Page 2 and read the third paragraph including
22 the quoted material.

23 A Starting with "although"?

24 Q Yes, please.

25 A "Although the two utilities do not have a

1 territorial boundary agreement clearly delineating the
2 geographic areas to be served by each, they were,
3 until March, 1981, bound by a 1947 contract for
4 electrical service between the two, and by Gulf
5 Power's wholesale tariff as filed with the Federal
6 Energy Regulatory Commission, FERC. Paragraph 16 of
7 the 1947 contract for electric service for resale
8 states: 'Neither party shall duplicate the other's
9 facilities except insofar as such duplication shall be
10 necessary in order to transmit electrical energy
11 between unconnected points on its line. When such
12 duplicating facilities are so constructed, they shall
13 not be used by the party owning them to serve existing
14 customers served by, or prospective customers
15 immediately adjacent to, the existing facilities of
16 the other party. Neither party shall distribute or
17 furnish electrical energy to anyone who, at the time
18 of the proposed service, is receiving electrical
19 service from the other party or to any firm,
20 residential or commercial customers whose premises are
21 capable of being served by the existing facilities of
22 the other without extension of its distribution system
23 beyond a distance of two-tenths of a mile.'"

24 Q In light of what you have just read -- I'm
25 sorry, I guess I cut you short. You probably need to

1 read a couple more paragraphs in order for me to ask
2 my next question.

3 Would you please read over into the
4 paragraph that ends on the top of page -- I'm sorry,
5 I've jumped ahead of myself.

6 Now, I ask you to read the last paragraph on
7 Page 3 that continues on to the top of Page 4.

8 A Are we finished reading from this page?

9 Q From that page, yes, I'm sorry.

10 A Thank you. Now, you wanted me to read the
11 last paragraph on Page 3.

12 Q Yes, and continues on to the top of Page 4.
13 And I apologize for the confusion.

14 A "Both utilities relied upon the provisions
15 of the 1947 contract for electrical service between
16 the two, which was in effect until March of 1981.
17 Pursuant to this contract, the Cooperative's
18 transmission lines running east along John Pitts Road
19 to the Bayou George substation were a duplication of
20 Gulf Power's existing facilities, but allowable
21 insofar as such duplication shall be necessary in
22 order to transmit electrical energy between
23 unconnected points on its lines.

24 "When the Cooperative began dropping service
25 lines from this stretch of transmission line, it

1 violated the duplication clause of the contract. In
2 this case the duplication is highlighted by the fact
3 that the Cooperative had to run its lines through two
4 existing Gulf Power Company customers in 1974 in order
5 to serve the previous occupant of Ms. Hand's property.
6 In view of the above, it is" --

7 Q And then it goes on to state the ordering
8 portion; is that correct?

9 A Yes.

10 Q In light of what you have just read, would
11 you agree that the Commission treated Paragraph 16 of
12 the 1947 contract as a type of territorial agreement?

13 MS. JOHNSON: I'm going to object to that
14 question. Mr. Stone is asking for Mr. Bohrmann to
15 render an opinion that deals with a legal matter and
16 whether or not the contract served as a territorial
17 agreement. Mr. Bohrmann is not an attorney. The
18 Order speaks for itself, and I object on that basis.

19 CHAIRMAN JOHNSON: Mr. Stone.

20 MR. STONE: He indicated there were no
21 agreements between the parties with regard to
22 territory. I was just exploring the nature of his
23 understanding of that with this Order before the
24 Commission.

25 CHAIRMAN JOHNSON: I'm going to allow the

1 witness to answer the question to the extent that you
2 do have an opinion. If you don't understand, then you
3 can say you don't understand. If you think it's a
4 legal question that you don't feel prepared to answer,
5 you can state that.

6 **WITNESS BOHRMANN:** When I stated on Page 5
7 of my testimony that Gulf Power does not have a
8 Commission-approved territorial agreement with any
9 other utility, I was speaking specifically to active
10 agreements. That is what I limited my research in
11 this regard to. Any agreements which have expired
12 were not considered.

13 **Q** **(By Mr. Stone)** Okay. Would you -- in
14 light of what you read and based on your experience,
15 would you agree that the Commission treated
16 Paragraph 16 of the 1947 contract as an agreement to
17 prevent uneconomic duplication of facilities?

18 **MS. JOHNSON:** I'm going to object on the
19 same basis.

20 **MR. FLOYD:** So am I.

21 **CHAIRMAN JOHNSON:** I think you are pushing
22 it.

23 **MR. STONE:** I'll withdraw the question.

24 **Q** **(By Mr. Stone)** Would you agree, subject to
25 check, that the general area which Gulf Power serves

1 customers is adjacent to and potentially overlapping
2 with areas served by two other investor-owned electric
3 utilities: Florida Public Utilities, Marianna
4 division; and Florida Power Corporation?

5 A Subject to check, I would say yes.

6 Q Would you also agree that the general area
7 in which Gulf Power serves customers is adjacent to
8 and potentially overlapping with the area served by at
9 least one municipally-owned electric utility, the City
10 of Blountstown?

11 A Subject to check, yes.

12 Q I take it from your testimony that Gulf
13 Power does not have a territorial agreement with
14 either or any of these three utilities providing
15 service in Northwest Florida; is that correct?

16 A Yes.

17 Q Have there been any disputes over service
18 area between Gulf Power and these other three
19 utilities that have been brought before the Commission
20 since 1974 when it was given statutory jurisdiction
21 over territorial matters and charged with avoiding
22 further uneconomic duplication of electric facilities?

23 A If I could have a moment to check my
24 background?

25 Q Please.

1 A From the research I was able to do, I wasn't
2 able to find any disputes between Gulf Power or any of
3 the utilities which you had listed in your question.

4 Q Okay. At the time you prepared your
5 testimony, you stated that in that same time frame
6 there had been six disputes before the Commission
7 involving Gulf Power and Gulf Coast. Isn't it true
8 that until the prison case was filed, the most recent
9 dispute involving these two utilities was the case
10 known as Paradise Lakes that was filed by Gulf Coast
11 on June 7, 1985?

12 A Yes, that is correct. But if I may -- if I
13 can expand on my answer, that point was brought out
14 time and time again yesterday by Witnesses Holland and
15 Weintritt. And although it is true that only one
16 dispute has happened over those 12 years, you know,
17 and -- as personally, I, you know, am grateful that
18 the two utilities have been able to expand their
19 customer base with so few disputes, but one thing you
20 can't overlook is that that's just one small piece of
21 time frame that these two utilities have been in these
22 intermittent disputes.

23 If you look to the period, you know, three,
24 four years immediately before then, there was five
25 disputes between Gulf Power and other utilities. And

1 the first thing that I learned in my economics
2 background, that people can do amazing things with
3 numbers and come up with any sort of conclusion that
4 you want to from it.

5 A more recent example was last night I was
6 watching Sports Center on ESPN, and they said that the
7 Chicago Cubs had won yesterday to go six and four in
8 their last ten games. However, the announcer did not
9 say that they lost their first 14 games and still are
10 admired and in last place of their division. And
11 without that information, you couldn't really gauge
12 how well the Cubs are doing this year.

13 And I think it's the same thing with these
14 disputes. You know, just looking at the last 12 years
15 is not really indicative of the history that's gone on
16 between these two utilities.

17 Q Mr. Bohrmann, would you agree that although
18 they had a dismal start, the Cubs are making a nice
19 comeback?

20 A Well, I personally wouldn't bet any money on
21 them; my money is on the Braves.

22 Q Enough baseball.

23 At the time you prepared your testimony, you
24 stated -- did I already ask that question? Yes, I
25 did. My apology.

1 Would you agree that prior to the enactment
2 of Section 366.04(5) in 1974, there was no statutory
3 prohibition against uneconomic duplication of electric
4 facilities?

5 A I don't believe there was any express
6 delegation of authority from the legislature to the
7 Commission on that point.

8 Q Would you also agree that when the
9 prohibition was placed in the statute in 1974, it was
10 specifically against further uneconomic duplication of
11 facilities?

12 MS. JOHNSON: I think the statute speaks for
13 itself. I'm going to object on that basis. And also,
14 I believe that this question has been asked and
15 answered.

16 MR. STONE: If I've repeated it, I'm sorry,
17 I didn't believe I'd asked that, but --

18 CHAIRMAN JOHNSON: Could you repeat the
19 question?

20 MR. STONE: When the prohibition was placed
21 in the statute in 1974, it was specifically against
22 further uneconomic duplication of facilities.

23 CHAIRMAN JOHNSON: And you are objecting on
24 the grounds that it's a legal question, did you say?

25 MS. JOHNSON: I think the statute speaks for

1 itself, and I believe the witness has already answered
2 that question in a series of questions that Mr. Stone
3 asked regarding Chapter 366 and the quote that
4 Mr. Bohrmann included in his testimony.

5 **CHAIRMAN JOHNSON:** I'm going to sustain the
6 objection. I do believe that the statute does speak
7 for itself on that particular point.

8 **MR. STONE:** Thank you.

9 **Q** **(By Mr. Stone)** There is no mandate to
10 eliminate existing duplication of electric facilities
11 contained in the statute is there?

12 **MS. JOHNSON:** Objection, on the same basis
13 that the statute speaks for itself.

14 **MR. STONE:** Commissioner, he has relied upon
15 the statute in preparing his testimony. He has read
16 portions of it, he's cited portions of it, he's placed
17 it in his testimony. I'm simply asking him what's not
18 there.

19 **CHAIRMAN JOHNSON:** The questions are a
20 bit -- it does appear to me that you are starting to
21 have him go through and interpret the statute and tell
22 you what is and what is not in the statute. A lot of
23 the questions appear to be perhaps more adequately
24 addressed in your legal briefs. So if you could --

25 **MR. STONE:** I'll move on.

1 **CHAIRMAN JOHNSON:** Yeah.

2 **Q** **(By Mr. Stone)** At Pages 7 and 8 of your
3 testimony, you quote from the Commission's rule
4 regarding the resolution of territorial disputes.

5 **A** Yes, I do.

6 **Q** Is there any mention in that rule of a
7 specific method for resolving disputes?

8 **A** The rule lists a criteria that the
9 Commission should use to determine territorial
10 disputes. I wouldn't consider applying those factors
11 a method.

12 **Q** Is there any mention in that rule of drawing
13 fixed territorial boundary lines?

14 **A** No, it does not, but I believe that whenever
15 the Commission resolves a territorial dispute and
16 implicitly draws a box, if you will, around the
17 disputed area, and that could be considered a
18 territorial boundary.

19 **Q** The rule does say that the Commission should
20 consider customer preference if all other factors are
21 substantially equal; isn't that correct?

22 **A** Yes, it does say that.

23 **Q** And it is that part of the rule in which the
24 Supreme Court relied on reversing the Commission's
25 decision to allow Gulf Power the right to serve the

1 prison; isn't that correct?

2 MS. JOHNSON: I'm going to object to that
3 question. I think it's been asked and we've dealt
4 with that. Mr. Bohrmann is not an attorney, and he's
5 being asked to interpret the Supreme Court's opinion.

6 MR. STONE: I'll withdraw the question.

7 Q (By Mr. Stone) Isn't it correct that lines
8 on the ground preclude customer choice even in cases
9 where all other factors are substantially equal?

10 A I would submit that if all other factors are
11 substantially equal, under my method, there would not
12 be territorial boundaries drawn.

13 Q In truth you cannot determine whether all
14 other factors are substantially equal except on a
15 case-by-case basis, can you?

16 A That is the method which has been applied
17 thus far, each territorial dispute is taken on a
18 case-by-case basis.

19 Q Yet lines on the ground, such as those
20 proposed by Mr Gordon, would preclude such
21 case-by-case review, wouldn't they?

22 A Yes, they would, but the purpose of the
23 method that I delineate in my testimony is to take
24 care of the most egregious examples of uneconomic
25 duplication that exist in the areas which have been

1 called into dispute. We would start with those, the
2 most egregious examples, and as other areas become
3 developed, then we would hope that the parties could
4 come to some sort of agreement of where other
5 territorial boundaries should lie.

6 Or if that's not successful, come back here
7 and ask for a ruling on whether or not a territorial
8 boundary would exist, and if it should exist, where
9 would it exist.

10 Q I assume that you have reviewed the boundary
11 proposal made by Mr. Gordon in this case on behalf of
12 Gulf Coast?

13 A Yes, I have.

14 Q You do not consider his proposal to be an
15 appropriate resolution of this case, do you?

16 A No. I think my method is a more appropriate
17 method to resolve this dispute.

18 Q At Pages 9 and 10 of your testimony, you
19 state, "No one can accurately predict today how growth
20 patterns will occur in the now undeveloped parts of
21 the disputed area in the future; therefore, the
22 Commission should not impede the logical
23 cost-effective expansion of each utility's services.
24 However, the Commission's decision not to draw
25 territorial boundaries in these now undeveloped areas,

1 should not be interpreted by the parties as a license
2 to prematurely install isolated distribution
3 facilities." Do you recall that reference?

4 A Yes, I do.

5 Q You then go on to recommend that the
6 Commission should direct Gulf Power and Gulf Coast to
7 cooperate so that extensions of each utility's
8 distribution facilities are handled in a
9 cost-effective manner. Do you recall that reference?

10 A Yes, I do.

11 Q Isn't that exactly what the territorial
12 policy statement proposed by Mr. Holland's Exhibit
13 GEH-3 would accomplish if it was adopted by the
14 Commission as an order in this case?

15 A In the now undeveloped areas of the disputed
16 areas, Mr. Holland's Exhibit GEH-3 could form the
17 basis of some sort of agreement between the two
18 parties. However, in those most egregious examples of
19 where uneconomic duplication exists, I believe my
20 method is a -- my method would work better.

21 MR. STONE: Thank you. I have no further
22 questions.

23 MS. JOHNSON: I have just a few.
24
25

1 this time.

2 **CHAIRMAN JOHNSON:** Do you need the question
3 repeated?

4 **WITNESS BOHRMANN:** Yes, please, if you will.

5 **Q** **(By Ms. Johnson)** Can you tell me what
6 role, if any, the avoidance of territorial disputes
7 played in the development of the proposal you discuss
8 in your testimony?

9 **A** Yes. I believe that the implementation of
10 my methodology that I put forth in my testimony, and
11 couple that with data that was acquired in the
12 discovery process, would lead to territorial
13 boundaries in the most egregious examples of
14 uneconomic duplication. And with those boundaries in
15 place, all parties: the Commission, both utilities and
16 the customers, would have a better idea of which
17 utility should serve which customer, which territory
18 of land, and that would lead to further -- excuse me,
19 that would lead to fewer disputes for the Commission
20 to handle down the road.

21 **Q** Do you recall reviewing the Chelco Order in
22 the line of questioning by Mr. Stone regarding whether
23 or not there's an actual dispute in this case?

24 **A** Yes, I do.

25 **Q** Can you please comment on your understanding

1 of why the Commission directed the parties to --
2 strike that.

3 Can you please comment on why, following the
4 resolution of the Washington County Prison, the
5 Commission directed that the docket not be closed?

6 MR. STONE: Commissioner, I'm not sure
7 there's a proper predicate for that question to be
8 asked of this witness who did not participate in that
9 earlier stage of the proceeding.

10 CHAIRMAN JOHNSON: Staff.

11 MS. JOHNSON: I think that Mr. Stone asked
12 him questions regarding whether or not there was an
13 actual dispute in this case, and I'm simply attempting
14 to clarify or get the witness to indicate why we're
15 here, why this proceeding is continuing. And I think
16 the witness is already -- that information is a part
17 of his testimony, and I'm just clarifying for the
18 record.

19 CHAIRMAN JOHNSON: I'm going to allow it.

20 WITNESS BOHRMANN: After reading the final
21 order which was done after the first phase of this
22 docket, I came across a couple sentences on Page 10,
23 and it states, "Territorial conflict appears to be a
24 way of life for these utilities. It boils over into
25 litigation intermittently, but is always simmering

1 beneath the surface to the detriment of the utilities,
2 their ratepayers and the public interest. It is time
3 to resolve the larger conflict between Gulf Power and
4 Gulf Coast. Therefore, we find that the broader area
5 in dispute in this case is all areas in South
6 Washington County and Bay County where the facilities
7 of the utilities are commingled or in close proximity
8 and the potential for further uneconomic duplication
9 in the facilities exists."

10 It is on this basis which I believe that the
11 Commission believed there was a dispute, and I took
12 this statement -- that was the basis for me believing
13 that there was a dispute as well.

14 **MS. JOHNSON:** That's all. No further
15 questions.

16 **CHAIRMAN JOHNSON:** Commissioners.

17 Mr. Floyd, did you have --

18 **MR. FLOYD:** Yes, I do. I have one on
19 recross.

20

21

22

23

24

25

1 **CHAIRMAN JOHNSON:** It will be so inserted.

2 **COMMISSIONER CLARK:** I need that -- Page 6,
3 Line 2, all the way over to where?

4 **WITNESS POPE:** Page 8, Line 11.

5 **Q** **(By Mr. Stone)** Mr. Pope, did you have an
6 exhibit to your prefiled rebuttal testimony?

7 **A** Yes, I did. There were two, marked as WFP-1
8 and WFP-2.

9 **CHAIRMAN JOHNSON:** Would you like those
10 marked as a composite exhibit?

11 **MR. STONE:** Yes, please.

12 **CHAIRMAN JOHNSON:** They will be marked as
13 Composite Exhibit 13 and identified as Composite
14 Exhibit WFP-1 and 2.

15 (Composite Exhibit 13 marked for
16 identification.)

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1 GULF POWER COMPANY

2 Before the Florida Public Service Commission

3 Rebuttal Testimony of

4 William F. Pope

5 Docket No. 930885-EU

6 Date Filed: December 20, 1996

7 Q. Please state your name and business address.

8 A. William F. Pope, Gulf Power Company, 500 Bayfront

9 Parkway, Pensacola Florida 32501.

10

11 Q. What is your occupation?

12 A. I am Coordinator of Bulk Power Planning for Gulf Power

13 Company in Pensacola, Florida.

14

15 Q. Please describe your educational background and
16 experience.17 A. I graduated from the University of Florida in March,
18 1975 with a Bachelor of Science in Electrical
19 Engineering; and in May, 1985, I graduated with a
20 Masters in Business Administration from the University
21 of West Florida. After graduation in 1975, I was
22 employed with the Gainesville-Alachua County Regional
23 Utilities, which is a unit of the City of Gainesville,
24 Florida as a System Planning Engineer.25 In October of 1978, I joined Gulf Power Company and
26 spent the next eight years in various engineering and

1 supervisory positions at two of the company's electric
2 generating plants.

3 In April of 1987, I became Supervisor of System
4 Planning which made me responsible for the Company's
5 long range distribution, transmission, and generation
6 planning. In May of 1993, I assumed my current position
7 of Coordinator of Bulk Power Planning at the Corporate
8 Office in Pensacola. In this position, I am responsible
9 for supervising the Company's activities for capacity
10 resource and transmission planning for Gulf Power's
11 long-range needs along with other bulk power operational
12 and planning issues. The activities of System and Bulk
13 Power Planning are deeply integrated with the marketing,
14 load forecasting, financial, power delivery,
15 distribution, and regulatory areas within Gulf Power
16 Company.

17

18 Q. Mr. Pope, what is the purpose of your rebuttal testimony
19 in this proceeding?

20 A. The purpose of my rebuttal testimony is to respond to
21 some of the statements made by Stephen Page Daniel in
22 his direct testimony regarding the planning aspects for
23 future service in the disputed areas in the absence of
24 specific territorial boundaries. I will explain how
25 Gulf Power plans and constructs extensions of its

1 distribution system in any area in an economically
2 efficient manner. Furthermore, I will describe some of
3 the situations of service extensions and upgrades in the
4 area that demonstrate Gulf Power's long standing
5 historical presence in Bay and Washington Counties. I
6 will also expose the flaw in SPD-3 where Mr. Daniel is
7 trying to demonstrate Gulf Coast Electric Cooperative's
8 (GCEC) substation capacity adequacy in the future and
9 demonstrate Gulf Power's own substation capacity
10 adequacy for years to come. Finally, I will address
11 issues raised by FPSC staff's Witness Todd Bohrmann with
12 regard to his recommendations on resolving the issues in
13 this proceeding.

14
15 Q. Do you have any exhibits to which you will refer in the
16 course of your testimony?

17 A. Yes. I have two exhibits.

18

19 Counsel: We ask that Mr. Pope's two exhibits,
20 WFP-1 and WFP-2, be marked as Exhibits
21 13 and _____, respectively.

22

23 Q. Mr. Pope, what do you have to say about Mr. Daniel's
24 assertion that without lines on the ground that both
25 companies will be planning the expansion of their

1 respective systems in order to serve the "same"
2 customers?

3 A. I cannot testify as to how GCEC plans their distribution
4 expansion. Gulf Power's planning is not guided by
5 expectations of serving an undetermined amount of
6 potential customers. Quite the contrary, the majority
7 of Gulf Power's distribution expansion is done to
8 specifically serve new customers as they request
9 electric service, many times requiring only a service
10 drop or minimal number of spans of primary and a service
11 drop. We are not installing miles of primary or making
12 major upgrades to the system in order to serve a fast
13 growing number of new customers in the area, but rather
14 we are simply hooking up a moderate number of customers
15 each year with a distribution system that is already
16 adequate to do so for years to come.

17 Furthermore, Mr. Daniel asserts that because the
18 two utilities are "planning to serve the same customers"
19 then the two utilities must be installing larger
20 facilities than necessary which is viewed by him as
21 being economically inefficient. I strongly disagree
22 with this characterization. In planning the
23 distribution system in this area, as well as throughout
24 Gulf Power's service area, reasonable projections of
25 growth for an area are made for which the most

1 economical means to meet this growth are decided.
2 Historical growth trends, as well as known customer
3 additions and the presence of GCEC's facilities, are
4 utilized in Gulf Power's planning. Gulf Power does not
5 assume to serve the same customers that GCEC does, but
6 rather only a reasonable share of those customers that
7 could be served economically by either of the utilities.
8 One would be foolish to upgrade the distribution system
9 with just the right size conductor to meet the growth
10 for just a few years since this would be a poor use of
11 distribution facility resources, knowing that another
12 upgrade would be needed in such a short time.

13

14 Q. Does the Florida Public Service Commission's Witness
15 Todd Bohrmann have some similar statements that concern
16 you?

17 A. Yes. Mr. Bohrmann asserts that since every other
18 investor-owned utility in the state has territorial
19 agreements with lines on the ground, then so should Gulf
20 Power. He implies that Gulf Power's opposition to lines
21 on the ground adds to the need for the Company to have a
22 territorial agreement. Gulf Power believes strongly
23 that there is no overwhelming reason to put lines on the
24 ground and thus prohibit the natural growth of both
25 utilities' facilities as new customers locate near them

1 and request to have electric service.

2 Mr. Bohrmann makes it sound like these other
3 territorial agreements are the perfect answer to
4 territorial issues. What he does not point out is that
5 there are many places in Peninsular Florida where there
6 are commingled facilities of utilities for which a
7 territorial agreement does not exist. In fact, some
8 municipals and electric cooperatives in Peninsular
9 Florida have agreed to work together on many aspects of
10 their business, but not territorial boundaries. They
11 have chosen to deal with the cooperatives much the same
12 way that Gulf Power does and that is on a case-by-case
13 basis. As stated in Mr. Weintritt's testimony, this has
14 worked well in the past and Gulf Power sees no reason
15 why it would not work well in the future.

16 If one looks at the maps supplied in this case, it
17 is fairly evident that GCEC and Gulf Power have some
18 locations where our facilities are in close proximity,
19 but there are many areas where they are not. Both
20 utilities should be allowed to determine their own
21 future growth through a natural progression of
22 extensions as new customers come along and should not be
23 restricted by rigid boundaries.

24 Although the Commission has been given the
25 authority to settle territorial disputes that arise in

1 the state, it is not clear as to whether they have the
2 authority to "mandate" territorial boundaries between
3 utilities in the absence of a bona fide threat of
4 further uneconomic duplication. The focus of the
5 Commission under the Grid Bill (Chapter 366.04(5)) with
6 regard to territorial issues should be the assurance of
7 avoiding further uneconomic duplication of generation,
8 transmission, and distribution facilities.

9 This case does not center around issues of adequacy
10 or reliability, but rather the concern that either GCEC
11 or Gulf Power will engage in uneconomic duplication in
12 the future. GCEC argues that lines on the ground is the
13 solution to the potential problem. What the Commission
14 should not lose sight of is its charge by law to avoid
15 further uneconomic duplication of facilities while
16 maintaining the utility's ability to grow with the
17 natural infusion of new customers. I do not believe
18 from a system planning perspective that there is any
19 problem with deciding which utility will serve
20 particular customers or groups of customers on a case-
21 by-case basis.

22 Gulf Power Company does not view its history of
23 territorial disputes brought before the Commission as
24 being unreasonable or too frequent. What may be the
25 difference between Gulf Power and the other utilities in

1 the state is that other utilities may be more tolerant
2 of uneconomic duplication. As mentioned earlier, one
3 does not have to travel very far to see vivid evidence
4 of the duplication in other parts of the state. The
5 issue here is elimination of future uneconomic
6 duplication and territorial disputes. Gulf Power
7 contends that lines on the ground is not the correct
8 solution. If lines are placed on the ground, our
9 companies will return to Tallahassee in the future to
10 ask the Commission to settle disputes as circumstances
11 ~~change.~~

12

13 Q. What do you have to say about Mr. Daniel's testimony
14 regarding the building of "alternate feeds to provide
15 better reliability" as being unnecessary duplication?

16 A. I believe that he is referring to having the capability
17 to provide for sectionalizing and switchability between
18 different feeders, which in some instances can be the
19 most economic choice among the available options to
20 provide the needed reliability. GCEC frequently boasts
21 about its reliability because of their switchability. I
22 would like to cite an example, which just happens to be
23 in the so-called "disputed area" where switchability
24 between substations was, by far, the economic choice.

25 In 1971, Gulf Power was in the process of

1 developing a plan to provide service to Deltona's
2 proposed Sunny Hills retirement development in
3 Washington County. Because of the potential ultimate
4 growth for this development at that time, it was
5 determined that the primary voltage level should be 25kV
6 as opposed to Gulf Power's standard distribution voltage
7 of 12.47kV. The question of how to provide back up for
8 the 115/25 kv transformer in the event of a failure was
9 a key element in this situation since this would be the
10 only such transformer in Gulf Power's system. It was
11 decided that it was much more economical to purchase a
12 12.47/25 kV autotransformer to be powered from the
13 Vernon Substation and install a 25kV feeder to provide
14 service in the undeveloped areas along C.R. 279 that
15 would extend to Sunny Hills and could serve as back up
16 for either substation in the event of a transformer
17 failure. This plan was put into place with the intent
18 that as the loads grew in the area to the extent that
19 either of the transformers, including the
20 autotransformer, became insufficient, that an evaluation
21 of the situation in the area would be made at that time
22 to determine what the economic choice would be for the
23 future. As a result of a lower than expected growth
24 rate in the Sunny Hills development, this system

1 remained adequate until it was recognized that changes
2 in the Vernon distribution system warranted a possible
3 major upgrade.

4 In 1989, an analysis showed there were concerns of
5 voltage level adequacy and load growth in the area that
6 would soon exceed the transformer capacity in the Vernon
7 substation. It was decided to permanently install a
8 115/25 kV transformer in Vernon and convert the
9 distribution system to 25kV. This not only solved the
10 voltage level problems, but also eliminated the need for
11 some conductor replacements that would have been needed
12 over the next few years had the system continued to be
13 operated at 12.47kV. The decisions made regarding Sunny
14 Hills and Vernon, while providing adequate reliability
15 for the area, have also been the most cost effective
16 options to take care of the various potential problems
17 that could arise.

18

19 Q. Mr. Pope, what about the adequacy and reliability of the
20 distribution system in the disputed area?

21 A. Gulf Power's main backbone feeder system in the so-
22 called "disputed area" is more than adequate to provide
23 reliable service to the area.

24 It is more important to determine who should serve
25 which customers by virtue of having lower costs.

1 Depending on the circumstances in each case, sometimes
2 the answer will be Gulf Power and sometimes it is going
3 to be GCEC. This is, once again, why I have a hard time
4 understanding Mr. Daniel's claim that both companies are
5 engaging in expansion that is termed unnecessary
6 duplication because we allegedly plan to serve the same
7 customers. Neither utility should be constructing
8 facilities in the absence of a bona fide need when to do
9 so is nothing more than an attempt to force the other
10 utility out. In those undeveloped pockets of the area,
11 the company having the least cost of service should be
12 allowed the opportunity to extend its facilities to
13 provide service in line with the gradual and natural
14 growth pattern of this area. As mentioned before, Gulf
15 Power does not support the practice of spending
16 unnecessary money to secure service territory with the
17 hopes of picking up the customers that rightly should be
18 served by another competing utility and to do so would
19 be economically inefficient. Gulf Power believes that
20 utilities should be allowed to fairly compete for new
21 business when it makes good economic sense. In Gulf
22 Power's view, the definition of specific service areas
23 by placing lines on the ground unfairly limits

1 competition and the customer's flexibility to choose the
2 lowest cost alternative.

3

4 Q. Mr. Pope do you have any comments about Mr. Daniel's
5 testimony on page 13 where he states that uneconomic
6 duplication occurs "when facilities are planned to serve
7 all the load in an area rather than that actually shared
8 between the utilities?"

9 A. Yes. Mr. Daniel continues to paint the picture that
10 absent lines on the ground, the utilities will continue
11 to compete and construct wastefully and end up with more
12 facilities than is necessary. This is just not the
13 case.

14 As I mentioned earlier, our expansion in this area
15 is driven by specific requests to provide service for
16 which we respond with specific construction to meet the
17 need. Once again, the Gulf Power is not in the posture
18 of building facilities for the sake of "maybe" getting
19 to serve some future customers. We view this practice as
20 being financially wasteful. This is why Gulf Power
21 believes that to further limit new customers' options by
22 placing lines on the ground is the wrong approach to
23 resolving this or any other territorial issue.

24 One can easily see by looking at maps of Washington

1 and Bay Counties that there are vast areas of
2 undeveloped property where neither utility has any
3 facilities for miles. Placing lines on the ground at
4 this time would be unproductive and meaningless since
5 future growth in this area is totally unknown. It is in
6 these areas where allowing for expansion of facilities
7 in a natural order makes the most sense. Consider that
8 lines were placed on the ground with facilities of each
9 utility a number of miles away. Then, sometime in the
10 future the first customer locates 500 feet away from the
11 line in Company A's territory, requiring Company A to
12 construct three miles of new distribution line to serve
13 the customer. Then later, another customer locates 500
14 feet from the line in Company B's territory, is it the
15 logical and cost effective thing to do for Company B to
16 construct three miles of new distribution line to serve
17 this customer in lieu of Company A only having to
18 construct 1,000 feet? No, that would be economically
19 inefficient.

20

21 Q. Do you see any problems with not having specific
22 territories defined by lines on the ground?

23 A. Yes. The absence of lines on the ground is not to be
24 the signal for a utility to construct facilities into
25 developed or undeveloped areas in the absence of a bona

1 fide request for electric service in order to secure
2 territory. This would be a blatant exercise of
3 unnecessary and uneconomic construction and would
4 unfairly penalize that company's existing and future
5 customers. Gulf Power would propose and honor a
6 prohibition of such unnecessary construction of
7 facilities, particularly any that would be built to
8 areas of undeveloped properties in the absence of a bona
9 fide request for electric service. This is incorporated
10 into Gulf Power's proposal for resolution in this
11 proceeding.

12

13 Q. What comments do you have about Mr. Daniel's exhibits
14 SPD-3 and SPD-5?

15 A. Although he uses data provided to FPSC staff on
16 August 12, 1996, he fails to point out that his
17 tabulation of GCEC's data on SPD-3 and SPD-5 are apples
18 to oranges comparisons and has misled the Commission
19 with his testimony. As Mr. Daniel states on Page 30 of
20 his testimony, he has taken information provided to him
21 by GCEC from the May 24, 1996 staff data request and
22 produced the transformer "available capacity" by
23 subtracting the substation load from the "fan rated"
24 substation transformer capacity. However, he fails to
25 state that of GCEC's, the only transformers that

1 currently has fans installed is one of the 7,500 kVA
2 transformers at Southport which is not even part of his
3 tabulation as presented on SPD-5. Mr. Daniel carries
4 this misrepresentation over to SPD-3 where he projects
5 the next five years of GCEC's "available capacity."

6 In order to more correctly represent the companies'
7 true transformer "available capacity," I have prepared
8 WFP-1 and WFP-2. The figures I tabulated for the
9 Company on exhibit WFP-1 come from total substation load
10 projections for 1996 through 2000, and actual
11 transformer data from Gulf Power's files. The
12 information I tabulated for GCEC is taken from
13 interrogatory responses where Gulf Power requested like
14 information from GCEC. Gulf Power requested each
15 substation's peak demand; however, GCEC gave the
16 substation demand at the time of Alabama Electric
17 Cooperative's coincident peak, which could be lower than
18 the substation's individual peak. Nonetheless, this
19 data is still useful in making the point that I intended
20 regarding Mr. Daniel's testimony since the substation
21 loading provided to Gulf Power in the interrogatory
22 response will be no smaller than the substation's
23 individual peak demand.

24 The substations where both companies may
25 potentially serve the same group of future customers and

1 are subject to competition, are limited to Gulf Power's
2 Vernon, Sunny Hills, Bay County, and Highland City
3 substations and GCEC's Crystal Lake, Fountain, and Bayou
4 George substations. One will also note that I have let
5 each substation stand alone to eliminate any potential
6 double counting of either load or transformer capacity
7 between areas.

8 The tabulation of Gulf Power's available
9 transformer capacity on WFP-1 reveals that there is no
10 need for capacity increases planned for any of these
11 substations over this period. One can easily see that
12 the available transformer capacity for the Vernon and
13 Sunny Hills substations, which are in an area where
14 considerable competition between the companies could
15 occur, is adequate for many years, even when back up to
16 either substation from the other is considered.

17 The tabulation of GCEC's available transformer
18 capacity on WFP-2 reveals that the capacities of GCEC's
19 substations is fairly slim and, in fact, the Crystal
20 Lake substation undergoes an upgrade by installing fans
21 in 1997. One can easily see that the available
22 transformer capacity for the Crystal Lake substation,
23 which is in an area where considerable competition
24 between the companies could occur, is much less than
25 that of Gulf Power's Sunny Hills and/or Vernon

1 substations.

2 As these exhibits demonstrate, in the areas where
3 competition between Gulf Power and GCEC could occur, the
4 substation capacities and feeder systems of Gulf Power
5 are of adequate size to meet the needs of these areas
6 for some years to come. One of the major reasons for
7 this is that the load growth in this area is relatively
8 small in comparison to metropolitan areas, the systems
9 in the rural areas are planned, designed, and
10 constructed to meet the long term needs of a sprawling
11 area, and there is an inherent natural sharing of
12 customers by virtue of proximity of facilities. It would
13 appear from these tables that if anyone is to have to
14 pay to upgrade facilities as a result of unexpected
15 higher customer growth, it will be GCEC, not Gulf Power.
16 It should also be pointed out that if there is
17 significant customer swapping in some of these areas, it
18 could cause GCEC to spend money to upgrade their
19 facilities much sooner than they had planned since their
20 variable transformemr capacity is so slim. As I
21 mentioned earlier, I cannot speak for how, specifically,
22 GCEC plans its distribution system expansion, but I do
23 know that Gulf Power Company does not engage in the
24 practice of planning and building unnecessary facilities
25 in order to serve all the potential customers in an area

1 of possible competition or to claim undeveloped service
2 territory. Gulf Power's policy is to construct what is
3 necessary to serve those customers that we believe are
4 ours to rightly serve once they have made a request for
5 service.

6

7 Q. How does the growth in the disputed area impact the
8 capacity resource needs of Gulf Power Company?

9 A. The amount of growth in the disputed area plays an
10 insignificant role in the capacity resource planning
11 process for the Company simply because of the size of
12 growth. The growth in demand of the disputed area could
13 increase by 300% or decrease to 0, and, under the
14 current plans have no impact on the type, amount, or
15 timing of Gulf Power's capacity resources over the next
16 seven years.

17

18 Q. Are there any conditions that could change in the
19 disputed area that would impact Gulf Power's
20 transmission system or the planning thereof?

21 A. Nothing in the disputed area could reasonably be
22 expected to change enough to have any impact on the
23 existing transmission system or Gulf Power's normal
24 plans for the future. As mentioned above, the growth in
25 the disputed area is rather gradual and Gulf Power's

1 transmission system is more than adequate to provide
2 service to the area for years to come. In reality,
3 transmission is not an issue with regard to adequate and
4 reliable service to the disputed area for either Gulf
5 Power or GCEC.

6

7 Q. Do you believe that lines on the ground would aid the
8 planning of the distribution system?

9 A. No. Irrespective of what might be alleged by GCEC,
10 having lines on the ground provides no benefit to
11 planning the distribution system in the disputed area.
12 The only knowledge we gain from lines on the ground is
13 to where our distribution system's expansions are
14 limited. One might argue that this does aid in the
15 planning of the system since each utility would know in
16 advance just where it could grow its system and where
17 not to build; however, such boundaries will not preclude
18 duplication of facilities. In some situations this will
19 not be the best for one utility or the other. A
20 utility's system should be allowed to grow naturally
21 with the location of new customers and not be bound by
22 lines drawn on the ground long before those customers
23 had any notion of locating in one place or another.

24 Consider for example, that lines have been placed
25 on the ground, some years pass by and then a new

1 subdivision is started with 75% of the plots in one
2 utility's area and the remainder in the other utility's
3 area. Let us also consider that one of the utilities
4 has adequate facilities adjacent to the new subdivision
5 and the other utility will have to extend a major feeder
6 two miles to reach the new subdivision. It would not
7 make sense to split these customers up between the
8 utilities just because there are lines on the ground.
9 If one utility has a significantly lower cost to provide
10 service to the new subdivision than the other utility
11 then it should be the service provider. However, if
12 there is not significant difference, then customer
13 choice should prevail. A utility cannot anticipate,
14 either with or without lines on the ground, that five
15 years from now ABC Developer is going to start a
16 subdivision over here so I am going to plan my
17 distribution system to meet its needs. As I mentioned
18 earlier, the growth in most of the area is gradual and
19 sporadic and placing lines on the ground is not going to
20 provide any benefit to the planning of the distribution
21 system. Most often the only construction necessary to
22 serve new growth in the area comes in the form of a
23 service drop. Once again, drawing lines on the ground
24 is not the best way to prescribe a territorial

1 agreement. The best way is to let the natural growth
2 pattern dictate the proper service provider. The only
3 factor that remains is for the companies to determine in
4 the specific cases who is the significantly lower costs
5 service provider.

6
7 Q. On Page 36 of his testimony, Mr. Daniel states five
8 reasons why he believes that the Commission should
9 establish a service boundary between Gulf Power and GCEC
10 that recognizes the historical service area of each.

11 What comments do you have regarding his statement?

12 A. I believe that his five reasons are just as valid for
13 not establishing specific service areas by placing lines
14 on the ground. Also, using historical service area as a
15 basis for establishing the lines can sometimes be fairly
16 clear, but in many instances will be extremely unclear.
17 The five reasons that Mr. Daniel believes justify the
18 establishment of service areas are (1) the large
19 geographic areas in question, (2) the uncertainty as to
20 where future consumers and load will materialize, (3)
21 the inability to accurately project the cost of
22 upgrading and constructing new facilities to serve new
23 customers, wherever they may be located, (4) the fact
24 that both utilities appear to have adequate system
25 capacity in the general areas in question, and (5) the

1 fact that the reliability of both GCEC and Gulf Power
2 has not been questioned.

3 The large size of the geographic areas in question
4 has nothing to do with promoting the idea of the need to
5 place lines on the ground. Just because the area of Bay
6 and Washington Counties is large does not say anything
7 about the benefits of lines on the ground. To the
8 contrary, the fact that the area is large implies that
9 there may be many benefits to letting nature run its
10 course and allow the growth itself to shape the future
11 electric supplier for the area. I do not see anything
12 in the size of the area that points to the need for
13 specific service areas based on historic service.

14 Likewise, the uncertainty of where future customers
15 and load will materialize has nothing to do with
16 justifying specific service areas. Putting lines on the
17 ground will not change customers' patterns of where they
18 decide to buy property and construct homes or
19 businesses. As consumers choose to build, if they are
20 near GCEC's facilities that are adequate to serve the
21 load, then GCEC should serve them. On the other hand,
22 if they locate near Gulf Power's facilities that are
23 adequate to serve the load, then Gulf Power should serve
24 them. This will allow for the natural growth of both
25 utilities' distribution systems without the future

1 administrative nightmare involved in revising service
2 boundaries as our systems grow.

3 I do not understand what "the inability to
4 accurately project the cost of upgrading and
5 constructing new facilities to serve new consumers,
6 wherever they may locate" has to do with the benefit of
7 having lines on the ground. If there were lines on the
8 ground, neither GCEC nor Gulf Power is going to say "I
9 am going to project the cost of building 2,000 feet of
10 new feeder over here next year to meet the new load
11 because that is where people are going to build houses."
12 No utility is going to get that precise when it comes to
13 projecting future growth in this area, but rather, as
14 mentioned earlier, as new customers locate or new
15 developments are established, we will build those
16 facilities necessary to serve them. Mr. Daniel would
17 lead you to believe that lines on the ground make it
18 possible to "accurately" project the cost of providing
19 adequate facilities to meet future growth. Reasonable
20 system planning neither requires nor supports the need
21 for such precision.

22 The fact that both utilities have an adequate and
23 reliable system in the areas has nothing to do with the
24 need for lines on the ground. The fact that GCEC and
25 Gulf Power have adequate and reliable systems means that

1 we are both ready and able to have our systems
2 economically grow with the natural growth in new
3 customers that locate near our respective facilities.
4 Putting lines on the ground does not make a utility's
5 system more or less adequate or reliable than the other.
6 Nowhere in Mr. Daniel's testimony does he draw a clear
7 conclusion as to why lines on the ground are justified
8 since both utilities have adequate and reliable
9 facilities in the areas. To the contrary, this supports
10 allowing customers to make a choice.

11 I see nothing in the five reasons listed by
12 Mr. Daniel that leads me to draw the conclusion that the
13 Commission should establish service areas based on
14 historic service. In many of the areas defined in this
15 proceeding, historic service can be rightly claimed by
16 both parties which will bring into play unnecessary
17 disputes in an attempt to place lines on the ground.
18 The major goal, whether there be a territorial agreement
19 or not, is the elimination of "further uneconomic
20 duplication of facilities." This has been in the
21 forefront of the Commission's charge to the utilities of
22 Florida since it has become involved in territorial
23 matters and this is where the focus should continue to
24 be. There had not been a territorial dispute between
25 GCEC and Gulf Power in over eleven years until this one

1 was filed because Gulf Power believed that GCEC
2 "uneconomically duplicated" our existing facilities in
3 order to serve the Washington County Correctional
4 Institute (WCCI). The focus of this proceeding should
5 be on the objective which is to eliminate future
6 uneconomic duplication of utility facilities and NOT to
7 place lines on the ground. Gulf Power contends that the
8 way in which these two utilities have functioned in the
9 past has not been a failure and does not need fixing.
10 Gulf Power also believes that the establishment of
11 specific, rigid service areas in South Washington County
12 and Bay County, no matter how they are determined, will
13 cause more disagreements and disputes in the future,
14 calling for more trips to the Commission to resolve
15 these squabbles, than if everything were left as it is
16 today.

17

18 Q. Do you have any concerns related to Mr. Bohrmann's
19 proposal to transfer some customers between Gulf Power
20 and GCEC in order to minimize future uneconomic
21 duplication?

22 A. Yes. I contend that transferring customers between our
23 companies is a waste of time, effort, and money. What
24 has already happened is done and no more effort should
25 be spent to change it for the sake of making things nice

1 and pretty. Our companies, as well as many others in
2 Florida, have existed under these circumstances without
3 feeling the urge to set things straight and should not
4 start now just because it would make the lines on the
5 ground completely separate our respective customers.

6 Furthermore, do not the customers have the right to
7 a one-time choice of their supplier or the continuance
8 of their electricity provider? I believe they should
9 have this right. I can just imagine what the current
10 Gulf Power customer would think when they are told that
11 as a result of some lines being placed on the ground to
12 denote service territory that they will now be served by
13 the more expensive GCEC. I believe that these customers
14 will pitch quite a fit. On the other hand, there would
15 probably be some delight expressed by the current GCEC
16 customers if they were to be informed that they will now
17 be served by a less expensive Gulf Power, which might
18 stir interest on the part of other GCEC customers and is
19 probably one of the underlying reasons that GCEC's Mr.
20 Daniel is not in favor of swapping customers as well.
21 Perhaps a more rational idea is to poll the customers in
22 natural "pockets" and if a significant majority in one
23 pocket wants to swap, let them. That would certainly
24 arouse less ire against this Commission than "government

1 dictated" swaps. I suggest there would be a significant
2 exodus from GCEC because of their higher rates.

3 However, the Commission may feel that they are
4 compelled to make a clean separation between Gulf Power
5 and GCEC in deciding this case. Although Gulf Power is
6 not in favor of this, if the Commission decides that in
7 order to do the right thing, that customers must be
8 swapped in order to be successful, then customer choice
9 should be the prevailing method of determining the swap
10 of customers in the commingled areas. Customers in the
11 area in question should be provided with all the facts
12 necessary to make an informed decision, including but
13 not limited to historical and current rate comparisons,
14 and then directed to call a toll-free number to place
15 their vote as to which utility they choose, with the
16 majority deciding their fate. The utility winning the
17 service will then make the necessary arrangements with
18 the other utility to swap or purchase the others
19 facilities in order to provide service. What facilities
20 are not needed by the successful utility to serve the
21 customers will then be removed by the losing utility at
22 its expense. Gulf Power still contends that swapping
23 customers is an uneconomic choice and not in the best
24 interest of the general group of customers, but if the

1 Commission is compelled to order a swap, the customers
2 should determine their own fate.

3 Q. Does this conclude your testimony?

4 A. Yes.

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1 Q (By Mr. Stone) Mr. Pope, would you please
2 summarize your rebuttal testimony?

3 A Yes. Good afternoon. My rebuttal testimony
4 addresses basically two major issues, and they are,
5 number one, planning issues that were raised by Gulf
6 Coast Electric Cooperative's witness Stephen Page
7 Daniel. His statements missed the mark for accuracy
8 with regard to Gulf's distribution planning. I also
9 expose a flaw through my exhibits in Mr. Daniel's
10 exhibits where he attempts to paint a picture of Gulf
11 Coast Electric Cooperative's substation capacity.

12 My testimony addresses some issues raised by
13 Commission Staff's witness, Todd Bohrmann, with regard
14 to his recommendations in his testimony.

15 My experience in the electric industry
16 provide me with a broad base of knowledge in
17 operations, construction planning, regulation and
18 administration. As such I know and I've seen not only
19 Gulf Power Company, but other utilities, conduct their
20 businesses.

21 Mr. Daniel seems to imply that our
22 distribution planning studies yield a plan to
23 construct new distribution facilities to serve an
24 assumed amount of new customers; I disagree. The
25 distribution planning studies tell us what needs to be

1 done with our existing facilities to meet expected
2 reasonable load growth in a relatively large
3 geographic area. It is the actual location of new
4 customers that dictates what and where new extensions
5 of facilities will be built.

6 And I say it again, it is the location of
7 the customers that completely drives what and where
8 new distribution facilities will be built.
9 Construction of new distribution facilities and
10 distribution planning studies don't necessarily
11 directly relate. And that concludes my summary.

12 MR. STONE: I tender the witness for cross
13 examination.

14 MR. FLOYD: Thank you.

15 CROSS EXAMINATION

16 BY MR. FLOYD:

17 Q Mr. Pope, you can't quantify the term "de
18 minimis," can you?

19 A No, and I don't believe I used that in my
20 testimony anywhere.

21 Q Is it correct that Gulf Power in this area,
22 the, quote, "disputed area," end quote, has not just
23 put in just exactly what is needed to take care of
24 existing situation -- the existing situation, but put
25 in enough to meet the growth over some number of

1 years; is that correct?

2 A That is correct, that's a reasonable
3 procedure for prudent planning.

4 Q All right. And, in fact, you have built
5 your facilities in this area to be able to provide for
6 future growth in this area for about ten years at the
7 current rate of growth, correct?

8 A To answer your question, yes, we have
9 planned to provide facilities not only in this area,
10 but all areas of Gulf Power Company's territory to
11 meet some reasonable expectation of growth in the
12 future. It may be at the time we were planning for
13 five, ten, maybe 15 years; it depends on the
14 situation.

15 Q All right, sir, but when we took your
16 deposition, you said for about ten years at the
17 current rate of growth, didn't you?

18 A That's when you asked that specific question
19 about a specific area, yes.

20 Q All right, sir. And you agree that the
21 facilities of Gulf Coast are reasonable for providing
22 electrical service to this area?

23 A Yes, there's no dispute there, I believe.

24 Q All right, sir. And in your prefiled
25 testimony you stated that the issue here is the

1 elimination of future uneconomic duplication and
2 territorial disputes, correct?

3 A Would you point to my testimony where I said
4 that --

5 Q Page 8.

6 A I'll just refresh myself.

7 Q Page 8, Lines 4 through 6.

8 MR. STONE: That material was removed.

9 WITNESS POPE: That's correct.

10 MR. STONE: That material that Mr. Floyd
11 just referred to was withdrawn.

12 MR. FLOYD: Well, I think I can cross
13 examine him on it as to what he initially stated.

14 MR. STONE: It's beyond the scope of his
15 actual testimony in this proceeding, and I would
16 object to the question on that basis.

17 CHAIRMAN JOHNSON: It has been stricken, and
18 unless it is referenced or can be tied to some other
19 portions of the testimony that have been admitted --

20 MR. FLOYD: All right. I'll try a different
21 way then. Thank you.

22 COMMISSIONER CLARK: Mr. Pope, just for my
23 clarity, and I know it's been withdrawn, but I think
24 it was a mistake to begin with, even if you had left
25 the testimony in, you say Gulf Power contends that

1 lines on the ground is the correct solution.

2 Everything I've heard today is just the opposite. Was
3 there a typo in there?

4 WITNESS POPE: That's correct. And that was
5 my -- originally, we sent an errata of that page that
6 corrected that previously. That would have been a
7 correction, but now it's been stricken, it's out.

8 MR. STONE: For the record, that errata
9 sheet was mailed to the Division of Records and
10 Reporting on January 15th.

11 COMMISSIONER CLARK: It's not in the
12 testimony.

13 Q (By Mr. Floyd) You agree, don't you, that
14 the drawing of territorial boundary lines between the
15 two utilities, Gulf Coast and Gulf Power, in these
16 disputed areas, that that would eliminate territorial
17 disputes between the two in those areas, don't you?

18 A No, I do not agree.

19 Q On your Exhibit WFP-2, you show projected
20 demand for each of four substations. What is the
21 source of those numbers, and how were they determined?

22 A On WFP-2, showing projections of growth at
23 Bayou George, Crystal Lake, Fountain and Bayou George
24 North, you are asking where these numbers came from?

25 Q What's the source of the numbers, and how

1 were they determined or produced?

2 A I believe the numbers came from an
3 interrogatory response from Gulf Coast that Gulf Power
4 Company submitted in its second set of
5 interrogatories. If you'll hold a second, let me see
6 if I can find that reference.

7 It came from interrogatory 42A.

8 Q Just a moment while I look that up. Just a
9 minute. (Pause)

10 MR. FLOYD: I have no further questions.

11 Thank you.

12 CHAIRMAN JOHNSON: Staff.

13 MS. JOHNSON: Yes. We have just one.

14 **CROSS EXAMINATION**

15 BY MS. JOHNSON:

16 Q On Page 10 of your testimony, at Line 25 --
17 actually Lines 24 and 25, you say "It is more
18 important who should serve which customers by virtue
19 of having lower costs."

20 Can you tell me, are you talking about the
21 utility's cost to connect the customer, or is this the
22 price the customer pays for service connection?

23 A In this particular instance, because of the
24 reference to where there are adequate facilities of
25 both to serve, it's in the context of the customer's

1 opportunity to have lower costs by a lower cost
2 provider.

3 MS. JOHNSON: We have no further questions.

4 CHAIRMAN JOHNSON: Commissioners.

5 COMMISSIONER CLARK: I just had a question.
6 I'm trying to find the page. Does Gulf Power support
7 retail competition?

8 WITNESS POPE: I'm not aware of our written
9 policy with regard to retail access. I believe we're
10 more in tune with allowing competition and customer
11 choice.

12 COMMISSIONER CLARK: Isn't that retail
13 competition?

14 WITNESS POPE: No, no, I don't believe so.
15 I don't look at it the same way, no, ma'am.

16 COMMISSIONER CLARK: How is it different?

17 WITNESS POPE: Retail access deals with
18 opening up all retail customers to a complete open
19 usage of anybody's facilities to serve all customers.
20 It could be a hunt-and-pick type of a situation where
21 I'm more in tune with a customer having a choice from
22 the day of service to choose who he feels will be his
23 competitive advantage supplier, whereas retail access
24 in somebody's view, in some views, allows for a
25 pick-and-choose type of a situation where that can

1 change weekly, monthly or maybe every six months. I
2 don't believe that's the same as mine.

3 **COMMISSIONER CLARK:** Okay. So the
4 distinction I understand is retail access, is that at
5 any given point a customer can change their supplier?

6 **WITNESS POPE:** There have been a large
7 number of scenarios and ideas thrown out that that
8 would be allowed. There have been some that said
9 maybe once every year. The jury is still out in
10 California and Michigan and someplace else about that.

11 **COMMISSIONER CLARK:** Well, what do you mean
12 when you say you support customer choice? That the
13 customer has a one-time choice?

14 **WITNESS POPE:** All other things being
15 substantially equal and people having -- utilities
16 having adequate facilities in an area where a customer
17 could choose, that the customer should have the
18 choice.

19 **COMMISSIONER CLARK:** Well, let me ask you.
20 Do you agree with Mr. Spangenberg that if a customer
21 wanted to build in effect an extension cord to some
22 other utility and was willing to bear that cost, that
23 he should have the ability to do that even if your
24 lines are nearby?

25 **WITNESS POPE:** I can only assume that that

1 customer would have done an analysis and feel that
2 there's still economic benefit for him to do that even
3 after paying that cost. And I believe that's
4 reasonable. There will be a point at which that
5 contribution will no longer be a benefit to that
6 customer under his way of looking at things.

7 **COMMISSIONER CLARK:** Are you saying that so
8 long as the customer makes the right economic choice
9 for him or her, they should have the right to do it?

10 **WITNESS POPE:** If that's what they feel, I
11 believe that's what they should be allowed to do. I
12 don't believe we should have things that preclude
13 them, such as lines on ground. I think that's my main
14 point.

15 **COMMISSIONER CLARK:** So any customer that,
16 say, in a subdivision being served by Gulf Power, if
17 they chose to build a line to get service from the
18 Cooperative, they should be allowed to do that?

19 **WITNESS POPE:** I don't think I'm really -- I
20 don't think this really applies too much to the
21 residential customer that's already going to locate in
22 an existing infrastructure established in a
23 subdivision. I don't believe that that customer can
24 find the economic advantage because of its use, its
25 level of use.

1 Yes, I believe, you know, if that comes to
2 bear and they do an analysis and say, "I want the
3 other utility," then for some reason they see that
4 value. I don't believe that customer would. I think
5 in most cases we are talking about larger use
6 customers that have an economic or business reason for
7 their competitive position to choose that and would
8 choose that.

9 **COMMISSIONER CLARK:** Well, I guess I'm
10 trying to understand, is it an analysis that so long
11 as, in our opinion or in Gulf Power or Gulf Coast's
12 opinion, the customer makes the right economic choice
13 for the customer, it should have the ability to make
14 that choice?

15 **WITNESS POPE:** I believe it should be
16 allowed to have that choice.

17 **COMMISSIONER CLARK:** All right. Suppose
18 that you show this customer analysis that says, even
19 over a ten-year period, by building this line and
20 investing the money, you are going to cost yourself
21 more money than you would if you had simply taken
22 power from the utility that was already serving the
23 area. If they still want to go ahead with it, ought
24 they be, to able to do that?

25 **WITNESS POPE:** Well, Commissioner Clark, I

1 have a tough time understanding why a customer would
2 do that?

3 COMMISSIONER CLARK: Well, I agree with you.

4 WITNESS POPE: I understand --

5 COMMISSIONER CLARK: But sometimes customers
6 want service from a particular utility.

7 WITNESS POPE: They may have other reasons
8 that go beyond that, and in the pure sense of the
9 word, yes.

10 COMMISSIONER CLARK: They should have a
11 choice?

12 WITNESS POPE: They should have a choice.

13 COMMISSIONER CLARK: And it would not be
14 limited to the utilities already in the territory, it
15 would be anyone else who wanted to come in and serve,
16 right?

17 WITNESS POPE: You're right, it may not. I
18 believe an example was made in my deposition about
19 what if Florida Power Corporation wanted to build a
20 transmission -- or had a customer that was located on
21 Panama City Beach that wanted to take power from it
22 and admit that they had to build a transmission line
23 from Port St. Joe.

24 If that customer sees that reason there, I
25 don't know if I can say that I would want them to do

1 that. I don't know if we'd end up here in a
2 territorial dispute or not. I think it would be
3 farfetched. I mean, I think the example's that
4 farfetched. I can see in other instances where it
5 would not be that way. But it appears -- if you put
6 me in that box, I must say yes. If that customer is
7 willing to do that, they see some value in it, they
8 should have that opportunity.

9 **COMMISSIONER CLARK:** Well, let me ask you
10 about this. What if Gulf Power is currently serving
11 them and for some reason they just don't think they
12 want to take power any longer from Gulf Power. And I
13 guess it's more like the Union Carbide case, they
14 found it would be more cost-effective if they took
15 power from Florida Power Corporation, and they wanted
16 Florida Power & Light to wheel the power. Suppose
17 they were willing to put in the lines from Gulf to
18 Florida Power Corporation. I understand from what you
19 say, they ought to be allowed to do that.

20 **WITNESS POPE:** I'm not really familiar with
21 the case, but, yeah, like I said, if you put me in
22 that box, in a pure sense of what I believe, yes. You
23 know, I said I don't believe the circumstances and,
24 like, I don't know the circumstances in that case.
25 But in most cases the circumstances aren't going to

1 avail themselves that way.

2 **COMMISSIONER CLARK:** Well, certainly there
3 are large users that may find that the cost
4 differential between the utilities is enough that it's
5 in their interest to build that line themselves.

6 **WITNESS POPE:** I'm sure of that, and that's
7 going to be the route of what the first wave of retail
8 wheeling is going to deal with. And that is those
9 large customers that can shop the market. And there
10 is open access now for your transmission system.
11 That's going to be the first wave. But they're going
12 to be making that on a business decision that means
13 dollars and cents, their bottom line.

14 **COMMISSIONER CLARK:** Then Gulf Power
15 supports that level of retail access?

16 **WITNESS POPE:** No, we are recognizing that
17 that exists, that it will exist in retail wheeling.

18 **COMMISSIONER CLARK:** But you said in your
19 testimony further, "Do not the customers have the
20 right to a one-time choice of their supplier or the
21 continuance of their electricity provider. I believe
22 they should have this right."

23 **WITNESS POPE:** That's correct. And what our
24 position in Gulf Power Company and the Southern
25 Company is that when that first wave of retail

1 wheeling comes, we expect to be and are going to be in
2 that position. That's our goal is to be in the
3 position to be the provider of choice.

4 **COMMISSIONER CLARK:** I'm guess I'm getting
5 confused between when it comes and whether or not you
6 support it. From what you've said, it sounds like, to
7 me, you support it.

8 **WITNESS POPE:** In the pure sense, yes. But
9 understand my testimony is based on the situation in
10 this case. And I'm not trying to get out into retail
11 wheeling. This testimony is not that broad.

12 **COMMISSIONER CLARK:** You are saying the
13 theory only applies in this limited sense and it only
14 applies in this limited area. It's not that everybody
15 should have a choice?

16 **WITNESS POPE:** No, ma'am. I'm saying I do
17 support competition and customer choice.

18 **COMMISSIONER CLARK:** Okay.

19 **WITNESS POPE:** That is a blanket statement,
20 yes, ma'am.

21 **COMMISSIONER CLARK:** All right.

22 **CHAIRMAN JOHNSON:** Redirect.

23 **MR. STONE:** No. There are no further
24 questions.

25 **CHAIRMAN JOHNSON:** And there were no

1 exhibits?

2 **MR. STONE:** We would move Exhibit 13.

3 **CHAIRMAN JOHNSON:** Oh, the composite
4 exhibit. Show that admitted without objection.

5 You are excused, sir.

6 (Exhibit 13 received in evidence.)

7 (Witness Pope excused.)

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9 **MR. STONE:** Might this be an appropriate
10 time to take a short break?

11 **CHAIRMAN JOHNSON:** You need one? Okay,
12 we'll take a ten-minute break.

13 (Brief recess.)

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15 (Transcript continues in sequence in
16 Volume 4.)

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